United States Court of Appeals
for the Second Circuit

SUPPLEMENTAL APPENDIX

77-6219

APPEAL FROM
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

---x

MARSHALL P. SAFIR,

Plaintiff-Appellant,

-against-

ROBERT W. BLACKWELL, Assistant Secretary
of Commerce of the United States of
America,

and

JUANITA KREPS, Secretary of Commerce
of the United States of America,

and

AMERICAN EXPORT LINES, AMERICAN PRESIDENT
LINES, LYKES BROS. STEAMSHIP CO., INC.,
MOORE-McCORMACK LINES, INCORPORATED,
UNITED STATES LINES, INC., FARRELL LINES,
INC., BLOOMFIELD STEAMSHIP CO.,
PRUDENTIAL STEAMSHIP CO., INC.

Defendants-Appellees.

---x

Docket No.
77-6219

SUPPLEMENTAL APPENDIX

UNITED STATES COURT OF APPEALS
FILED
MAR 6 1978
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

MARSHALL P. SAFIR
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PAGINATION AS IN ORIGINAL COPY

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77 C 1093

APPEAL

207 1	77	1093	05 25 77	1	450	1	14		0713	DOOLING, J.	

PLAINTIFFS | **DEFENDANTS**

SAFIR, MARSHALL P.

AMERICAN EXPORT LINES ET AL

A125

MARSHALL P. SAFIR

AMERICAN EXPORT, LINES, AMERICAN PRESIDENT LINES, LYKES BROS. STEA SHIP CO, INC., MOORE MC CORMACK LINES, INC, , UNITED STATES LINES FARRELL LINES, INC. BLOOMFIELD STEAMSHIP CO, PRUDENTIAL GRACE LINES, INC., PRUDENTIAL STEAMSHIP CO INC.

CAUSE

T-31, U.S. C. Sect. 231,232,233, 235 - An action for recovery of false claims und

Relating Case 68 C 643 - Judge Dooling

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FILING FEES PAID			STATISTICAL CARDS	
DATE	RECEIPT NUMBER	C.D. NUMBER	CARD	DATE MAILED
			JS-5	
			JS-6	

C 1093 SAFIR, MARSHALL VS AMERICAN EXPORTL

DATE	NR.	PROCEEDINGS
5/25/77		complaint filed/summons issued. A126 (1
5-26-77		Clerk's order for personal service filed. mg (2
6-17-77		Notice of appearance for U.S. Lines, Inc. filed. mm 3
6-17-77		Notice of appearance for American Export Lines, Inc. filed. mm 4
6-17-77		Notice of appearance for Lykes Bros & Moore McCormack filed. mm 5
6-17-77		Notice of motion and memorandum of law for an order extending time of defts to answer complaint, etc. filed. mm 6/7
6-22-77		Declination of appearance of USA filed. ld (
6/22/77		Notice of motion ret. 6/27/77 for an order extending the time of def AMERICAN PRESIDENT LINES, LTD., PRUDENTIAL LINES, INC., PSS STEAMSHIP CO. INC. & FARRELL LINES, INC. to file their answers with respect to complaint filed. lg. (
6/28/77		Notice to takeddeposition of pltff. Marshall P. Safir on 7/1/77 by defendants, filed. (1
6/27/77		Before DOOLING, J. Case called. Deft. moves to enlarge time to answer until 30 days after U.S. answered. Deft.'s time to answer enlarged to 30 days from 6/21/77 on condition that (1) Deft. accepts service as accomplished and (2) no deposition of pltff. until after answer on motion to dismiss. lg.
6-29-77		By DOOLINGJ-Order dtd 6-28-77 that the time of defts, other than Bloomfield Steamship Co to answer is extended to 7-21-77 etc filed. See order. mg (1
7/21/77		Answer of defts American President Lines, Ltd, Farrell Lines, Inc. Prudential-Grace Lines, Inc. and PSS Steamship CompanyInc. filed. (12
7/22/77		Def's AMERICAN EXPORT LINES, LYKES BROS. STEAMSHIP CO.. INC., MOORE MC CORMACK LINES, INCORPORATED and U.S.LINES, INC. answer to complai filed. (13
7-26-77		Stenographer's transcript dtd 6-27-77 filed. ld (14)
8/24/77		Notice to take deposition of Marshall Safir filed. jlj (1
9-13-77		Notice of motion ret 9-23-77 for an order consolidating this action with 68C 643 filed. See 68C 643. mg --
9-13-77		Pltff's affidavit filedwith affidavit of service. See 68C 643. mg --
9-28-77		Notice to take deposition of Marshall P. Safir filed. mm (16
10/7/77		Stenographer's transcript of the deposition of pltff. MARSHALL P. SAFIR, on 9/28/77 ,filed. P/C mailed to counsel for all. (17)
10-18-77		Notice of motion ret. 10-28-77 for an order granting summary judgme in favor of defts and memo of law in support of motion filed (See 68 C 643). ld ===
10/19/77		Notice ofmotion ret. 10/28/77 by the NON-TRADE LINES AMERICAN PRES. LINES, LTD., FARRELLLINES INC., PRUDENTIAL LINES, INC. & PSS STEAMSHIP CO. INC. to Dismiss or alternatively for summary judgment in 77-C 1093 & of opposition to pltff's motion to amend complaint in 68 C-643 filed and MEMORANDUM of the above in support of motion to dismiss or alternatively for summary judgment & in opposition to pltff's motion to amend the complaint in 68-C-643 filed. (FILED IN 68-C 643 Documents 87 & 88) lg
10/27/77		Answer in opposition to motion for summary judgment filed. See document # 91 in 68 C 643 - entry reads - Reply to opposition to motion to amend and consolidate. tk ------
11-5-77		Memo in reply to opposition for consolidation filed in 68 C643. ld ===
11/7/77		Memo of the non-trade lines american president lines, ltd, farrell, Inc, Prudential Lines, & PSS Steamship Company in response to the answer by Marshall P. Safir in opposition to motion for summary judgment filed

CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF	DEFENDANT	DOCKET NO. 77 C 1093
SAFIR, MARSHALL	AMERICAN EXPORT LINES, ET AL	PAGE ____ OF ____ PAGE

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DATE	NR.	PROCEEDINGS
11/10/77		Supplemental reply in opposition of motion for summary judgment filed. tk (19)
12-13-77		Affidavit of Reigh F. Klann in opposition to pltff's motion for an injunction filed with notice of Special Counsel for American Export and memorandum in opposition. mg (20/21,
12-13-77		Supp. affidavit of S. Crimins in opposition to Safir's motion for injunction filed. [illegible] fy (23)
12/13/77		Before DOOLING, J. Case called. Hearing on ORDER TO SHOW CAUSE begun. Hearing concluded, adjourned w/o date. lg
12-7-77		By DOOLINGJ-Order to show cause for preliminary interlocutary injunction with tro dtd 12-6-77 filed. (ret12-13-77) ng (24)
12/15/77		By Dooling,J.-Order dtd 12/13/77 that it appearing that the matte of the sale of the stock of American Export Lines, Inc, is under the supervision of U.DC for SDNY in a proceeding under Chap XI of Bankruptcy Act and that case inthis court is unaffected by the disposition proposed to be made of tns stuck of American Export Lines, Inc it is Ordered that motion is dismissed.(see # 24)filed. (see # 24)
12/21/77		By Dooling,J.-Memorandum and Order dtd 12/20/77 directing clerk to enter judgement that pltff take nothing in 77C1093 and that act is dismissed for want of jurisdiction, filed.jm (25)
12-22-77		Judgment that the motions of defts for summary judgment in 77-C-1093 are granted; that the motion of pltff to amend th4e complaint in 68-C-643 and to concolidate that action with 77-C-1093 is denied; and that the ~~motion~~ pltff shall take nothing of the defts in 77-C-1093 and that the action is dismissed for want of jurisdiction filed on 68-C-643. fy
12/23/77		NOTICE OF APPEAL filed by pltffs. frpm order entered 12/20/77 granting motion to dismiss, filed. Copy mailed to C.of A. and docket entries forwarded, and Copy of Notice of Appeal mailed to all other defts. (See attached list for attys.) (26
12-27-77		Sten. transcript dtd, 12-13-77 filed. fy (27)
1-5-78		Sten. transcript dtd 12-13-77 filed. mg (28)
1/25/78		Scheduling Order received from court of appeals and filed sg 2
1/25/78		Stenographers transcripts of 10/28/77, filed.jm (30

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

MARSHALL P. SAFIR, Plaintiff, v. AMERICAN EXPORT LINES, et al., Defendants.	:	77 C 1093
MARSHALL P. SAFIR, Plaintiff, v. ROBERT W. BLACKWELL, et al., Defendants.	:	68 C 643 MEMORANDUM and ORDER

Appearances:

MARSHALL P. SAFIR, pro se

ELMER C. MADDY and KIRLIN CAMPBELL & KEATING, KOMINERS FORT, SCHLEFFER & BOYER, and KURRUS & ASH for American Export Lines, Lykes Bros. S.S. Co. and United States Lines

ROBERT T. BASSECHES and BARRETT, SMITH SCHAPIRO SIMON & ARMSTRONG, BERGSON, BORKLAND, MARGOLIS & ADLER, SHEA & GARDNER and FOLEY, HOAG & ELIOT for American President Lines, Farrell Lines, Prudential Lines, and PSS Steamship Co.

GILBERT S. FLEISCHER and DAVID G. TRAGER, United States Attorney

DOOLING, D.J.

The 1977 action was commenced on May 26, 1977, against the ocean carriers to enforce their alleged liability

ATT. 1

under 31 U.S.C. § 231 to the United States. The ground of liability asserted is that the carrier defendants, by reason of their participation in a practice discriminatory against Sapphire Steamship Lines, Inc., were not entitled to payment of any construction or operating differential subsidy (46 U.S.C. § 1227) but have nevertheless filed claims for and received payment of such subsidy amounts from the United States, and that those subsidy claims must be held to be false, fictitious or fraudulent. Plaintiff sues in reliance on Clause (B) of 31 U.S.C. § 232; that clause authorizes any person to bring a suit to recover the fraud damages and forfeiture provided in Section 231 "as well for himself as for the United States". Plaintiff has given to the United States the notice required by Section 232(C), by supplying it with a copy of plaintiff's Petition for a Writ of Certiorari and Appendix in Safir v. Kreps as comprising plaintiff's "disclosure in writing of substantially all evidence and information in his possession material to the effective prosecution of such suit." (The petition for writ was one of three addressed to the decision of the Court of Appeals for the District of Columbia Circuit, reported 551 F.2d 447. The petitions were denied October 3, 1977.) The United States within sixty days thereafter declined in writing to enter the suit, saying that it had concluded from plaintiff's submission that the central issue of plaintiff's allegations in the present 1977 action "is presently being litigated in the United States District Court for the District of Columbia in an action styled" Marshall P. Safir, plaintiff, v. Juanita M. Kreps, et al., defendants, Civil Action No. 74-1474. Plaintiff, then, is free under Section 232(C) to pursue the suit unless there is a defect in the court's authority to proceed, for Section 232(C) provides, in part, that

> "The court shall have no jurisdiction to proceed with any such suit brought under clause (B) of this section whenever it shall be made to appear that such suit was based upon evidence or information in the possession of the United States, or any agency, officer or employee thereof, at the time such suit was brought."

Section 235 provides that suits to enforce liability under Section 231

> "... shall be commenced within six years of the commission of the act, and not afterward."

In the period from March 29, 1965, until March 1, 1966, the Atlantic and Gulf American Flag Berth Operators (a "conference") had in effect rates for certain United States military cargoes which the Federal Maritime Commission (FMC) on December 12, 1967, held had been designed for the sole purpose of eliminating Sapphire Steamship from the carriage of military cargo by unfair competition; these rates the FMC characterized as so unreasonably low as to be detrimental to the commerce of the United States, contrary to the public interest, and, in consequence, violative of 46 U.S.C. § 814.* Counsel for plaintiff and Sapphire promptly drew the attention of the Federal Maritime Administration, Maritime Subsidy Board to the FMC decision and to the provisions of 46 U.S.C. § 1227, and demanded that action be taken to recover all subsidy payments made after March 29, 1965, and to cease making subsidy payments currently. No action having been taken by the Maritime Administration plaintiff, Sapphire Steamship Lines and Arnold Weissberger commenced an action in the Eastern District of New York, 68 C 643, on June 24, 1968, to compel the Maritime Administration, Maritime Subsidy Board and the Secretary of Commerce to cease making subsidy payments to AGAFBO members and to initiate suits to recover from them subsidy payments therefore made. The district court dismissed the complaint, but on appeal the Court of Appeals held that the Maritime Administrator could not refuse to proceed against the AGAFBO members without at least considering the interest of the victim and was at

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*The decision was not appealed.

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least required to make a considered decision whether to recover the subsidies paid in the past, and that plaintiff had standing to question the Administrator's failure to seek recovery of the subsidies paid during the period of violation. Safir v. Gibson, 2d Cir. 1969, 417 F.2d 972 (Safir I). A second appeal settled that, although current subsidies to the AGAFBO members would not be enjoined in the absence of a showing of violation of 46 U.S.C. §§ 814, 1227, the Maritime Administration was not to redetermine the issue whether the AGAFBO carriers' concerted action in reducing their rates to an unreasonably low level and holding them there for eleven months was unjustly discriminatory or unfair to Sapphire but was to give the FMC's determination the effect of collateral estoppel; the court noted that the Maritime Administration could investigate the nature and extent of individual carriers' participation in the illegal action if it found that relevant to its ultimate decision on whether to seek recovery of subsidies paid during the violation, and, if so, how much and from whom. Safir v. Gibson, 2d Cir. 1970, 432 F.2d 137 (Safir II).

Glossed over Dooling II

The Maritime Administration, Maritime Subsidy Board, conducted a proceeding (No.S-243) before its Chief Hearing Examiner and a Recommended Decision rendered on April 24, 1972, would have fixed liabilities as follows:

American Export Isbrandtsen Lines	$169,000.
Moore-McCormack Lines, Inc.	1,135,000.
United States Lines, Inc.	3,452,000.

Ship Bribery

Plaintiff was dissatisfied with the decision, and after an unrelated injunction matter had been disposed of (2d Cir. 1972, 469 F.2d 1061), the Maritime Subsidy Board by decisions of April 9 and October 10, 1973, fixed the liabilities at the following amounts.

American Export	$38,050.25
Bloomfield	121,893.67
Lykes	762,891.99
Mormac	386,776.56
United States Lines	1,061,704.76

Plaintiff sought to review the April 1973 decision of the Maritime Subsidy Board in the Court of Appeals for the Second Circuit, but by order of May 16, 1973, the application was denied. An appeal by the carriers to the Secretary of Commerce resulted in an order of September 9, 1974, adjusting the liability amounts "to reflect the effect of the United States Government action" in actively inducing the rate reductions in issue to its substantial financial benefit. The adjusted liabilities were:

American Export	$ 18,160.82
Bloomfield	46,346.54
Lykes	381,446.00
Mormac	193,276.76
United States Lines	487,292.14

Plaintiff sought review of the liability determinations in the United States District Court for the District of Columbia; that action was dismissed but, on appeal to the Court of Appeals for the District of Columbia Circuit, the dismissal was reversed and the case remanded to the District Court to try the issues, which the Court of Appeals outlined as including the propriety of the administrative action in mitigating the penalties assessed and reducing the subsidy recovery to reflect the proportion of military cargo carried "by the predatory lines", and as extending to the arbitrariness of the precise action taken, determining whether the various factors other than those cited as justifying mitigation can properly be considered and whether in light of all factors appropriate for consideration, the administrative action was arbitrary, capricious, or an abuse of discretion on all the facts developed in the hearing before the Administrative Law Judge (Chief Hearing Examiner); the Court of Appeals left determination of the applicable standards of review qualifiedly open for the district court to determine on remand, but indicated the view that the Secretary's decision to mitigate on the basis he expressed appeared to reflect a failure to come to grips with the difficulties in the evidence in the record, gave little assurance that his order resulted from a reasoned decisionmaking and might, upon the District Court's scrutiny of the record, show the necessity of a remand to the Secretary for a clarification of reasons. Safir v. Kreps, D.C.Cir. 1977, 551 F.2d 447.

1. Plaintiff moved on September 13, 1977, to amend the complaint in 68 C 643, which, as noted, sought to compel the Federal Maritime Administration, Maritime Subsidy Board, to stop paying subsidies to AGAFBO members and to recover from them any subsidies paid to them after March 25, 1965. The amendment would add a claim under 31 U.S.C. §§ 231 et seq., alleging, in addition to the earlier allegations of violations of 46 U.S.C. §§ 814, 817(b)(5) and 1227, and of consequent liability by virtue of 46 U.S.C.§1227 to refund past subsidies to the United States,

> that during the eleven months period of violation the carriers received over $227,000,000 of subsidies

> that in May 1971 after defendants were advised that a prima facie case of violation of Section 1227 had been made out, defendants continued to submit vouchers supporting claims for subsidies allocable to the eleven month period of violation knowing them to be false in that defendants, to their knowledge, were not entitled to subsidy payments while in violation of the provision of their subsidy agreements by which they agreed not to be parties to any agreement among carriers which is unjustly discriminatory or unfair to another American flag carrier, and
>
> defendants signed and submitted affidavits in support of their vouchers stating that they had fully complied with the subsidy agreement and regulations and were entitled to the payments requested, and submitted annual accountings asserting that they had complied with the terms of the subsidy agreement knowing that they had not done so.

Plaintiff argues that the amendment is proper and should relate back to the date the action was filed. Under Rule 15(a) plaintiff may amend only by leave of court, a leave that is to be freely granted when justice so requires; where amendment is allowable, the claim asserted relates back to the date of the original pleading provided that

> "... the claim ... arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading ..."

There is no reason to allow this closed case to be revived by amendment. The original complaint made no claim against any of the defendants. It did, however, clearly pray an adjudication ——————————

1
Get Dowling
order in 1975
to refute
"Closed"

that the making of any subsidy payments to the AGAFBO carriers during the violation months was illegal under 46 U.S.C. § 1227, that continuing subsidy payments to the AGAFBO carriers should be forbidden, and that the public officer defendants should be directed to sue the AGAFBO members to recover the subsidy payments illegally made to them. However, the AGAFBO parties intervened some time before June 18, 1970, after the decision of the Court of Appeals in Safir II, in order to petition for a rehearing (432 F.2d at 145).and after that date were heard in the further district court proceedings in 68 C 643. Plaintiff raised in the case as well as before the Chief Hearing Examiner his point that the United States should recover all the subsidies, and that, on some basis, he should participate in/or benefit by the recovery, and in connection with plaintiff's motion by order to show cause of May 4, 1972, and the related appeal, there was discussion during oral argument on May 31, 1972, of plaintiff's possible qui tam interest and reference was made to the "False Claims Act" (31 U.S.C. §§ 231 et seq.) in the context of Connecticut Action Now, Inc. v. Roberts Plating Co., Inc., 2d Cir. 1972, 457 F.2d 81; plaintiff's affidavit of August 21, 1972, submitted in the Court of Appeals plaintiff, asserted that he had been actively concerned that the public officials take proper safeguards to protect the interest of the United States

> "... and his [plaintiff's]own in later action under 31 U.S.C. Sec. 231, 232, 233 & 235 after extent of these recoveried are decided on."

Plaintiff presented, as an issue for the Court of Appeals to decide, the question of his "statutory interest under 31 U.S.C. Sec. 231-233, 235 in any forfeiture mandated by the violation of 46 U.S.C. Sec. 1227, Sec. 810 by the offending ocean carriers as Sec. 819 has been interpreted by [the Court of Appeals] decisions in Safir v. Gibson". Plaintiff argued in the affidavit, after quoting language from the brief before the Chief Hearing Examiner concerning the AGAFBO carriers' making the offending rate agreement despite the Section 810 compliance clause in the subsidy contracts, that

of "the Public" Counsel.

> "The deceit is obvious. The respondents unlawful behaviour during that period violated both a clear provision in the subsidy agreement as well as an explicit statute and in presenting their claims for subsidy payments corresponding to that period the respondents received government monies to which they were not entitled. Moreover, in presenting the claims, the respondents were holding out that the provisions of Sec. 810 which are incorporated in the subsidy agreement had been complied with, in effect misrepresenting their compliance with its terms. Appellant in fact far exceeds the requirements of the doctrine in Marcus ... to justify his qui tam interest."

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"must"

On this point, the Court of Appeals was clear (469 F.2d at 1063):

> "Plaintiff complans of a statement by the district judge that he would have no interest in any recovery by the Government. This statement was unnecessary to the decision and we have no occasion either to approve or to disapprove it."

The statement complained of was

> "Plaintiff argues that he may have an individual right to participate in any ultimate recovery by the Government under qui tam legislation. No statute authorizing a qui tam recovery or qui tam proceedings has been pointed to and the decision in Connecticut Action Now, Inc. v. Roberts Plating Company, Inc. ... makes it reasonably clear that the plaintiff has no qui tam interest in the Government's recovery under Section 810 of the Merchant Marine Act, 1936 as amended (46 U.S.C. § 1227)."

2.

The motion to amend the complaint in 68 C 643 and to consolidate that action with 77 C 1093 must be denied. While, as it would be amended, the complaint would in ultimate substance add a False Claims Act Count, that count does not arise out of the matter of original complaint. The original complaint sought to compel public officers to do what plaintiff contended that it was their duty to do. The claim rested on the contrast between the FMC decision that the AGAFBO rates were unjustly discriminatory and the failure of the Maritime Administration, Maritime Subsidy Board, to take appropriate action in the light

Cell [illegible] effect [illegible] 46 USC 1227

Discuss Rule 17 & Rule 19

of 46 U.S.C. § 1227. The new matter would add a completely new claim both as to substantive content and as to the identity of the persons against whom relief was sought. Nothing in the original case turned on the knowing presentation of a false, fictitious or fraudulent claim. There is no basis for authorizing an amendment that would transform the case, in effect dismiss the original defendants, and pursue a completely different claim. Cf. Rosenberg v. Martin, 2d Cir. 1973, 478 F.2d 520, 526-527; United States v. Templeton, E.D. Tenn. 1961, 199 F.Supp. 179, 183-184.

2. By motions for summary judgment defendants challenge the False Claims Act complaint of 77 C 1093 on its merits.

Plaintiff's testimony was taken on September 28, 1977, with a view to determining what evidence or information he had communicated to the United States that was not already in its possession at the time of suit. He testified that he made available to the Government through the Maritime Administration Public Counsel in 1971 all the information that he then had to support the False Claims Act suit, 77 C 1093, and that he had not transmitted or offered any Government representative any new information since that time, none having been requested of him. Plaintiff said he did have information to bring forward at the present time, based on the fact that the case, 77 C 1093, had been filed. Annex A sets forth the relevant parts of the testimony that he then gave about the content of the new disclosures to him. The new material, related to a corrupt arrangement to frustrate plaintiff's endeavor to vindicate his claims, is neither germane to the False Claims Act case nor to the Government's claims under 46 U.S.C. § 1227, nor is it material that was not in the possession of the Government since it professedly came from "leaks" from the Watergate Special Prosecutor's office.

It is unanswerably clear that the Government had in its possession all the evidence and information upon which plaintiff's False Claims Act suit is based at the time such suit was brought. Within ten days after the offending rates were put in effect plaintiff made a twelve page statement to the Joint Economic Committee, Subcommittee on Federal Procurement and Regulation, in the course of its hearing on Discriminatory Ocean Freight Rates and Balance of Payments, describing in considerable detail, under the questioning of Senator Douglas, the AGAFBO "fighting rates" adopted "in an effort to drive non-AGAFBO members our of business ." Specific reference was made to the fact that certain ACAFBO carriers were subsidized and Sapphire was not; the subcommittee was advised that "the Managing Director has been in touch with Sapphire on the matter and is attempting to collect data on this rate with a view toward possible investigation of it." In a May 1966 communication to the same subcommittee plaintiff asserted that "American subsidized lines should be denied subsidy on that portion of their cargoes for which no foreign flag competition exists." In March 1971 plaintiff presented to the Merchant Marine Subcommittee considering S.1220 (a bill that would have authorized certain appropriations) that it should not authorize appropriations to be disbursed without the considered decision mandated by the decisions of the Court of Appeals for the Second Circuit and provoked Senator Hatfield to inquire whether it would not be more appropriate to bring court action on the question of the disbursement of the funds.

These disclosures, to which must be added those incident to the proceedings before the Maritime Subsidy Board, the present district court, the Courts of Appeals of the Second and of the District of Columbia Circuits and the United States District Court for the District of Columbia, and the material underlying the original Federal

Maritime Commission decision on the rates, presented to the Government all the information and evidence bearing on the issues save for the matter of directing the Government to the contention that for the AGAFBO members to have filed claims for subsidy payments while they were operating in violation of Section 810 (46 U.S.C. § 1227) or in respect of the period during which they were operating in violation of the section was arguably to have filed claims "knowing such claim[s]..to be false, fictitious or fraudulent" or claims which were supported by vouchers known "to contain any fraudulent or fictitious statement or entry." But even that very contention was laid before the Government with explicit reference to the False Claims Act in the August 21, 1972, affidavit in the Court of Appeals.

The Government, then, was on May 26, 1977, when suit was started, in possession of the evidence and information upon which the suit is based. It is equally probable that a great deal of the information and evidence possessed by the Government, and much of the impetus to action, derived from plaintiff.

That plaintiff is the source of a substantial part of the evidence and information that was in the Government's possession does not authorize continuance of the action. United States and Aloff v. Aster, 3rd Cir. 1960, 275 F.2d 281, affirming Judge Hastie's decision, E.D.Pa. 1959, 176 F. Supp. 208, make clear that Section 232 prohibits "any qui tam action based on information already in the possession of the United States, regardless of the source from which that information has come." The present case, one in which plaintiff in substance directs the Government's attention to its possible rights under Section 231 as applied to the facts brought out in the Federal Maritime Commission and the Maritime Subsidy Board proceedings, resembles United States v. Armour & Co., D.C. 1956, 146 F.Supp. 546, aff'd, D.C. Cir. 1958, 254 F.2d 90. The Aster case was followed in United States ex rel. Vance v. Westinghouse Electric Corp., W.D.Pa. 1973, 363 F.Supp. 1038, 1042, with an intimation of reluctance. United States ex rel. Davis v. Long's Drugs, Inc., S.D. Cal. 1976, 411 F.Supp.1144, held that Medicaid claims presented to the states were within the False Claims Act, but that the facts in the possession of the state in question should not be considered facts in the possession of the United States for Section 232(C) purposes. However, the court in Long's Drugs expressed "serious reservations" -

about the validity of Aster. The court considered that the clause in Section 232(C) was intended to deny the right to sue only to parasitical suitors who had derived their facts from the public record of the Government's own investigations and was not meant to exclude those who voluntarily furnished information to the Government before starting suit upon the Government's failure to do so. That, the court considered, flowed from the liberal interpretation of the Act adopted in United States v. Neifert-White Co., 1968, 390 U. S. 228. But Neifert-White was liberal in reading the statute as embracing a wide range of Government interests, and throws no light on the Court's attitude toward the clause in Section 232(C). And the statute itself answers the serious reservation of Long's Drugs about the validity of Aster. Under Section 232(E)(2) if the United States rejects the suit and the plaintiff presses it to a conclusion, the plaintiff may receive up to one-fourth of the recovery as "fair and reasonable compensation ... for the collection of any forfeiture and damages", plus the reasonable costs and expenses of suit. If the United States comes in and takes the suit over, however, then under Section 232(E)(1) the court may award the original suitor "an amount which in the judgment of the court is fair and reasonable compensation to such person for disclosure of the information or evidence not in the possession of the United States when such suit was brought." The award may not exceed one-tenth of the recovery. These provisions have taken the place of the older provision, Section 6 of the Act of March 2, 1763, 12 Stat. 698, (Revised Statutes § 3493) which gave the private suitor one-half the damages and forfeitures that he should "recover and collect" as well as the costs of the suit. The older statute gave the United States neither a right to notice of the suit's pendency, nor a right of intervention in it; its sole right was to one-half the recovery and the power to veto a withdrawal or discontinuance of the suit. See Bush v. United States, C.C. Oreg. 1882, 13 Fed. 625, 629; United States v. Griswold, D.Oreg., 1885, 24 Fed. 361,366, aff'd, C.C.Oreg. 1887, 30 Fed. 762. In United States ex rel. Marcus v. Hess, 1943, 317 U.S. 537, the United States appeared only as amicus curiae, at the request of the Court (317 U.S. at 545). Under the present statute the United States is given control of the suit at its option, and it may altogether exclude the private suitor from participation in the conduct of the case. The emphasis is on limiting the informer's award precisely to what he adds to the store of information and evidence that was in the Government's possession when the suit was started. That the private suitor, in the pursuit of his own interest and to secure a relief that he could obtain only through the Government, may have disclosed facts and evidence to the Government that arguably might also arm it to pursue a Section 231 claim against the defendants, does not create an exception to the provisions of Section 232(C), nor in principle should it. Plaintiff's submissions of evidence to the Federal Maritime Commission, to the Maritime Subsidy Board and to the Senate Subcommittees were directed to specific substantive reliefs to which plaintiff claimed entitlement for Sapphire and for himself by reason of his interest in Sapphire and its business. But the submissions were thereafter in the Government's possession for all purposes, including its determining from them the measure of its own rights, and what relief it would seek in its own considered judgment.

Since so much of Section 232(C) as deals with the effect of the Government's prior possession of the evidence and information on which the suit is based is treated as strictly jurisdictional, United States (by Greenberg)

v. The Burmah Oil Co. Ltd., 2d Cir. 1977, 558 F.2d 43, 46, it follows that the action must be dismissed. In the circumstances it would not be proper to pass on the questions of fraud and of limitations presented by defendants.

It is

ORDERED that the motions of defendants for summary judgment in 77 C 1093 are granted, and the motion of plaintiff to amend the complaint in 68 C 643 and to consolidate that action with 77 C 1093 is denied; and it is further

ORDERED that the Clerk enter judgment that plaintiff take nothing in 77 C 1093 and that the action is dismissed for want of jurisdiction.

Brooklyn, New York
December 20, 1977.

U. S. D. J.

ANNEX A

employee or representative of the government?

A I have offered it. It has not been requested of me.

Q Will you tell us what you have offered to them?

A Well, I haven't offered anything specific to them. I have information which now based on the fact that this case is filed will be brought forward.

Q I now ask you to give us the information which you intend to bring forward.

A Well, upon information and belief, at some time in 1968 an arrangement was made between members of this group and the then Republican Party for the consideration of a considerable sum of money, to see to it that the subsidies which formed the basis of a complaint filed in 1968, in June, that that case, if the Republican Party was elected to office, would be made difficult for the plaintiff to succeed.

Q May I ask you whether you have any documents to support this arrangement that the Republican Party had?

A I have no documents, but I have -- that my information came from -- I will put it this way. It came in 1973, about October of 1973, by a telephone call from a newspaper reporter who asked me whether I knew anything about a deal involving approximately $7,000,000 in which --

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and he mentioned by name one Spyros Skouras, Senior, had through someone in the Republican Party -- and I am not sure whether it was Mr. Stans that he mentioned by name or not -- had arranged for this $7,000,000 to be paid over, over a period of time, to parties within the Republican Party, for the purpose of settling or disposing of the antitrust case which was then filed by the Trustee in Bankruptcy of Safir Steamship Lines, and also my case, which at that time was in the nature of mandamus and which was the original action that I filed in 1968.

Q Could you tell me the name of the newspaper reporter?

A The name of the newspaper reporter was -- his name was Louis Kohlmeyer, and I understand that he is a Pulitzer prize winning reporter who worked for the Wall Street Journal at the time I first knew him, and at the time he called to inquire about my information, about this information, was working for the Chicago Sun Times syndicate in Washington.

I told him at that time that like a husband whose wife was cheating, I would be the last to know the answer to his question, as to whether I had any information on the subject. My answer to him was no, but from that point on I knew that there would be a point in this litigation when under a False Claims Act amendment, in one case or in a new case filed as this one is here, that we are here today, filed last May, that new information would be supplied to the government in order to firm up the specific intent to defraud, which I felt as far as my case was concerned, this form of contribution would represent.

Q You say this inquiry was in 1973?

A Yes, sir.

Q Did you ever tell anyone in the government about the inquiry?

A No.

Q Why didn't you tell them?

A Because at that time I had no proof, and I had no basis on which to act, except and distinct from perhaps a Special Prosecurtor's office and others who were interested at that time.

Mr. Kohlmeyer mentioned, however, if this will be helpful to you, Mr. Fort, and it might be, that certain of this information that he was basing his call to me on was based on leaks from the Special Prosecutor's investigation in the Nixon impeachment case. Make the most of it.

Q So that what you are saying is that the information in essence was in the possession of the government at the time he called you, because he had heard about it through leaks from the Special Prosecutor?

A If you think so. As I said, make the most of it. I don't think so. I don't think that that could be considered in the hands of the Attorney General, Department of Justice, since they were not involved in the Special Prosecutor's office.

Q Were any other companies mentioned by this reporter?

A Not by name.

Q Now, return to the affidavit, Mr. Safir.

A Yes.

Q Paragraph 5, Page 7.

A I seem to have a problem there, Mr. Fort. Paragraph 5?

Q Five begins on Page 6 and it goes on to Page 7.

A I beg your pardon. Go right ahead, sir.

Q I would like to read you a sentence from that paragraph, starting off with "Thus, the conduct and transactions which were in issue before the Maritime Subsidy Board, as a result of the 1968 complaint and are now res judicata, are the same as which formed the basis for the proposed amended complaint."

5 I did, and there was no answer and then he called me back at home.

Q Mr. Kohlmeyer?

A Yes. Now, I think I tried to get him back at the Wall Street Journal, but he wasn't there and then he called me and he told me that he was no longer with the Journal, but with the Sun Times syndicate.

Q Do you remember what time of day you were called by Mr. Kohlmeyer?

A I think it was late afternoon.

Q Where was your office at this time?

A No, he called me back at home.

Q What office did he call?

A He called the office at 41 Flatbush Avenue, Brooklyn.

Q And where were you living at that time?

A I was living in 8 Southview Lane in Kingspoint, New York. So there was a relay of calls from my office to my home.

Q What are you using to place --- what information are you using to place the date of the call some time in September or October of 1973?

A My own memory. Just my recall because of the nature of what was going on at that time, the events

6 of the time and the timing of his statement that leaks are coming out of the Watergate Hearings and he went further, he went further on this thing, I haven't told you all that he told me.

Q Before we get into the actual conversation, I am just going for information that -- the information which you base your memory of the date of the conversation.

A I did not quite finish that question. I based it on the fact that the Watergate Hearings were on, that as a special prosecutor -- no, I wasn't even sure of that, that the Maritime, the head of the Maritime Commission had been called by the Watergate Committee.

He said at that time or a few days prior to that, Helen Bentley by name had been called by the Watergate Committee, so I placed the timing to be more accurate, perhaps others can too, to place it about the time that she was called before the Watergate Hearings.

Q So the conversation was after she had testified?

A After she testified and certain newspaper type leaks had emanated.

Q How did the conversation begin, who spoke first?

A He did. He said, do you remember me, I

7 said, of course I remember you.

Q Could you give us the rest of the conversation as you remember it?

A Then he started to ask me questions. In fact, he said, have you felt that you are having a very difficult time in making progress on your case and I said, I sure have felt it.

Q What was your understanding of what he meant by your case?

A The case that I was pursuing in the Maritime Subsidy Board, S 243, which was the outcome of my initial action in 68 C 643 in the Eastern District of New York.

Q He asked you a question and you responded. Was that your only response to the question?

A Yes. I said, why do you ask. That was my next question.

Q What was his response?

A He said, well, we are getting words and I am quoting now on the basis of a conversation of six years ago, so there is some license or liberty involved.

Q Is it six years or four years ago?

A Excuse me, '73 is four years ago. I was thinking of the first one. Anyway, in connection with the one of four years ago, I asked him, why do you ask

8 and he said, because there are certain things emanating from the Watergate Hearings that show a relationship between your case and certain things that have happened in regard to campaign contributions and things like that.

He said, do you know of a payoff to Nixon at that time, he said, in the neighborhood of five and a half million dollars. I said, unheard of and I said, I would be the last to know if that were the case, because I mentioned in connection with being like a cuckolded husband, always being the last to know.

He said, did I see any relationship between the City of Baltimore and the problems I was having. I said, no. I said, why do you bring that up. He said, well, isn't it interesting to you that Andrew Gibson and Helen Bentley and also the Vice President of the United States comes from Baltimore.

I said, well, I cannot see what the relationship is. He said, well, there is evidence involved which we are hearing about that connects a payoff of this five and a half million dollars on your case, to the relationship of Andrew Gibson, who was a vice president of Prudential Grace Lines, and an employee of Skouras coming into the administration as the Maritime Administrator. A relationship between Helen Bentley, 9 a Baltimore reporter, becoming the head of the Federal Maritime Commission and the vice president.

So, I said, I still cannot see the relationship between the vice president and these people. He said, well, Skouras is a Greek. I said, that is right, or Greek extraction. He said, well, we hear it down here and this is what he said, that for the money that he paid into the Nixon administration to buy your case and the problems that you are having, he additionally recommended to Nixon at the time that he would like if his Greek-American compatriot becomes the vice president of the United States for the same five and a half million dollars.

I said, I find that very hard to believe, but that is a lot and if the next time I am in Washington, I will be very glad to discuss this thing further and I did. I came down to Washington soon thereafter, I came down, I called him up and I met him in his office at this National Press Building.

Q Are we going onto another conversation?

A Yes. We are going onto another conversation.

Q All right. Let's go back to the telephone call to you. Did Mr. Kohlmeyer tell you where he had gotten this information?

10

A No, he did not.

Q Did he indicate that he had gotten it from the testimony at the hearings?

A No, he did not. He indicated that it came in the form of a leak.

Q From --

A From one of the bureaus, apparently some agency, apparently the special prosecutor or the Ervin Committe at the time. I don't know, but it was a kind of a leak thing that he was trying to check out, as to whether I knew anything about it.

Q You mentioned that he was using the pronoun, we have gotten this information.

Do you know if he was working with anyone else in this investigation?

A I don't know.

Q Did he mention any other reporter's name?

A He did not.

Q Did he tell you when Mr. Skouras had been in contact with Mr. Nixon?

A He did not.

Q Did he mention any dates --

A Well, there is a determining factor in that, because Mr. Skouras died soon after Nixon came

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magnificent sum out in order to presumably settle the antitrust case, and see to it that the subsidies not be withheld from the lines, from the steamship lines, who were then receiving them and who were apparently guilty of the violation.

Q Have you had any contacts with Mr. Kohlmeyer since your October or September, 1973 telephone conversation?

A Yes. I mentioned the fact that I visited with him a month or two or three thereafter.

Q Do you remember if it was in 1973 or 1974?

A It might have been in early '74. I told him, I told you that he had an office, he was in this little office all by himself in that building.

Q What building is that?

A National Press Building. Apparently he was a pipe smoker, because the room smelled like a gas bin. You could not breathe in it.

I said, look, I am prepared to cooperate and help you on this thing, if you want some help. I am surprised that you hadn't gotten back to me earlier.

He had nothing much to say. He looked like he was unhappy with the whole conversation, and perhaps he shouldn't have called me in the first place.

So at that point I decided that was the end of it, at least for then, and I certainly -- I had nothing further to go on. Everybody and his brother was investigating everybody else at that particular time, and I had my own problems, most of which were based on the ongoing fight with you people.

So I did nothing further about it.

Q Had you initiated this meeting?

A The second meeting, yes, it was me.

Q And do you remember what Mr. Kohlmeyer said?

A He said he would think about going further with it, and that he would get in touch with me, which he never did.

Q Did he ask you any additional questions?

A Not a one.

Q Did he give you any additional information?

A I don't recall.

Q Did he give you any documents?

A No.

Q Do you remember him giving you any more details or mentioning any names?

A I said no. He was reluctant to, from being practically garrulous in the telephone conversation, he was very reluctant to do any talking on that visit.

Q Do you remember how long this second meeting

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77C 1093

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

--X

MARSHALL P. SAFIR, Pro Se, and
on Behalf of the United States of America,

Plaintiff,

-against-

AMERICAN EXPORT LINES
AMERICAN PRESIDENT LINES
LYKES BROS. STEAMSHIP CO., INC.
MOORE McCORMACK LINES, Incorporated
UNITED STATES LINES, INC.
FARRELL LINES, INC.
BLOOMFIELD STEAMSHIP CO.
PRUDENTIAL GRACE LINES, INC.
PRUDENTIAL STEAMSHIP CO., INC.,

Defendants

X--X

Affidavit
and
Complaint

MARSHALL P. SAFIR, Plaintiff, Pro Se, on this 26th day of May, 1977, having been duly sworn, deposes and says:

I. I am a citizen of the United States and of the State of New York who, in the year 1965, brought to the attention of the Joint Economic Committee of the Congress certain illegal concerted actions by these defendants. The Chairman, Senator Paul Douglas, after an open hearing then referred the matter to the Federal Maritime Commission for investigation. The FMC then instituted a lengthy investigation (Docket 65-13)*, which culminated in a finding that these subsidized ocean carriers, acting in concert with others, violated Sec. 15 of the Shipping Act of 1916. This finding, inter alia, was incorporated in the FMC decision dated December 11, 1967.

Soon thereafter, this plaintiff filed an action in the nature of mandamus in this District (68c643) to compel the Secretary of Commerce to cease subsidy payments to the violators of Sec. 15 of the Shipping Act and to recover payments made to the violators since the violation on the theory that collateral estoppel existed between Sec. 15 of the Shipping Act and Sec. 810 of the Merchant Marine Act of 1936 in regard to the subsidized carriers.

*Docket 65-13 Rates on Government Cargo 11FMC263-287 (1967)

The history of the case from 1968 to 1977 is spelled out in detail in attachments A and B.

The seminal action, however, was brought in this District. All of the defendant violators intervened as defendants here before the learned Judge Dooling and all of these carriers, with one exception,[1] continue to transact business here.

Briefly, these ocean carriers were found to have violated Sec. 810 of the Merchant Marine Act (46 USC 1227) by the Maritime Administration in April 1973[2] and later on review by the Secretary of Commerce in September 1974[3] in hearings mandated by the Court of Appeals of this Second Circuit. The plaintiff alleges that this finding is now res judicata.

II. This Court has jurisdiction under 28 USC 1331, 1337 and 1651 and 31 USC 232. Venue is proper, pursuant to 28 USC Sec. 1391.

III. The statutes involved here are Title 46 USC 1227 and Title 31 USC 231, 232, 233, 235.

IV. On May 26, 1971, the Congress of the United States appropriated under the Second Supplemental Appropriation Act 1971 (PL92-18) the sum of $80,000,000 to liquidate past due obligations and about half $40,300,000 was appropriated to liquidate, in final part, unpaid ship operation subsidies for the calendar year 1968 and earlier years, the payment of which had been delayed by disagreements over subsidy amounts due the carriers. The sum of $43,150,521.84 was disbursed on and between May 27, 1971 and June 11, 1971 when disbursement was arrested pending decision on a motion by this plaintiff for an injunction against payment of these funds.

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[1] Bloomfield Steamship Company discontinued operations in 1966.
[2] See Attachment B, page 104a to 176a.
[3] See Attachment B, page 56a to 58a.

V. On June 22, 1971, Judge John Dooling of this Court, issued an order enjoining the payment of operating differential subsidy funds to the above-named defendants pending the outcome of a fact-finding investigation by the Department of Commerce as to whether Sec. 810 of the Merchant Marine Act of 1936 had been violated by these defendants. (See Memorandum Incorporating Finding of Fact and Order dated June 23, 1971, page 184A of Attachment B herein.)

The significance of the dates commencing with May 27, 1971 in regard to subsidy payments made for the offending period in 1965-1966 must be emphasized here. The payments in May and June of 1971 were explained by Judge Dooling, as follows:

> "The entire $40,300,000 appropriated to pay past-accrued but unliquidated subsidies is

made up *not* of basic current operating differential subsidies, which are generally disbursed as earned more or less currently to the extent of about 90% to 95% of the amount ultimately determined to be due, but with the *held back* amounts consisting of *balance amounts* due only when finally determined and agreed on between the carrier and the administration."

In short, the statute of limitations on those obligations finally settled in 1971 and paid out in May-June of that year has not tolled as of this date in 1977 and the balances (5% to 10%) are inseparable segments of the false claims which were filed during and following the period of violation in 1965 and 1966.

VI. The issues involved in the complaint herein are now before the United States Supreme Court in Docket 76-1505, a copy of which is enclosed as Attachment A. However, pending the outcome of that petition and an amended complaint in Docket 68c643,[4] a technical statute of limitations deadline may be argued in extremis by the defendants herein, if this complaint was not filed within the six-year statute of limitations for the anniversary dates of the final false claims disbursement. Hence, this complaint at this time. (See last paragraph page 20, attachment A and footnote.

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[4] The U.S. District Court for the District of Columbia is also open as a forum for amended complaint incorporating 31 USC 231 et seq. covering construction differential subsidies paid during the offending period where no residual balances were paid out in 1971. See Attachment B, page 17a.

VII. This is a civil action for a judgment declaring the defendants liable for penalties and for the refund of double the sums paid out to the lines found in violation of Sec. 810 of the Merchant Marine Act 1936 as a consequence of the collateral estoppel effect of this violation on 31 USC 231, and for an order implementing such recovery on behalf of the plaintiff herein and the United States of America.

VIII. Plaintiff alleges that the illegal behavior was in violation of the operating differential subsidy contract signed between the government and the contractors incorporating the wording of Sec. 810, and that the clear provisions of the statute and subsidy contracts, both binding on the defendants, were deceitfully violated when without any overture to the Department of Commerce they acted in concert to destroy an unsubsidized American Flag competitor.

IX. That these actions were inimicable to the interests of the United States in that the weight and leverage of subsidy funding was used to hurt an American competitor without the knowledge of the contracting agency charged with the responsibility for promoting the welfare of the American Merchant Marine.

X. That, simultaneous with the filing of this complaint, a notice of pendency is being served on the U.S. Attorney for the Eastern District and the Attorney General of the United States. That, because of requirements of 31 USC 232(c), plaintiff Safir is stayed from proceeding with this action during the time reserved to the Government to decide whether to proceed with the prosecution, that he pleads pro se pending prosecution by the Attorney General, or waiver. That, in the event of waiver, plaintiff Safir will engage licensed counsel to proceed as set forth in 31 USC 232(e)(2).

WHEREFORE, Plaintiff Prays:

(1) That all moneys paid out during the period of violation or reasonably allocable thereto for operating differential subsidies, as set forth in the

schedule on page 208A of Attachment B annexed hereto, (and which schedule is subject to final adjustment) be refunded to the United States, as they were falsely claimed and illegally paid out.

(2) That, the provisions of Title 31 USC 231 for penalty plus double the amount of false claims finalized by the payments in May and June of 1971 be assessed on the final audited amounts paid to each individual carrier plus the statutory amount for each false voucher submitted.

Respectfully submitted,

Marshall P. Safir

Marshall P. Safir, Pro Se
41 Flatbush Avenue
Brooklyn, New York 11217
Tel. No.: 212 - 858- 2700

May 26th, 1977

Regina E. Levine

REGINA E. LEVINE
Notary Public, State of New York
No. 24-4615276
Qualified in Kings County
Commission Expires March 30, 1977

Marshall P. Safir
41 Flatbush Avenue
Brooklyn, New York-11217

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May 26, 1977

Honorable Griffen Bell
Attorney General of the United States
Department of Justice
Washington, D.C. 20530

Dear Sir:

This is to notify you of the pendency of an action filed this day in the Federal District Court for the Eastern District of New York under Title 31USC Sec. 232(b) on behalf of the undersigned and the United States of America against certain subsidized ocean carriers.

Enclosed herewith in accordance with Title 31USC Sec.232(c) is a copy of the complaint with attachments A and B comprising substantially all of the pertinent evidence and information material to the effective prosecution of this suit. If additional information is needed the undersigned is prepared to cooperate fully.

In accordance with this section of the law, if the United States shall fail, or decline in writing to the court after a period of sixty days after service to enter this suit the undersigned will proceed to engage licensed counsel to prosecute the case on behalf of the United States of America and himself.

Respectfully yours,

Marshall Safir

Marshall P. Safir

MPS:rl

Marshall P. Safir
41 Flatbush Avenue
Brooklyn, New York-11217

A171

May 26, 1977

David Trager, Esq.
United States Attorney for the
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York-11201

Dear Mr. Trager:

In accordance with Title 31USC Sec. 232(c), I am pleased to submit this notice of pendency of an action taken today in the Eastern District.

Enclosed herewith is a copy of the complaint with attachments and a copy of my letter to the Attorney General of the United States.

If I can be of any service during the sixty day stay of my right to pursue this action on behalf of the United States and myself, I would be happy to cooperate with you fully.

Sincerely yours,

Marshall P. Safir

MPS:rl

CIS:ECB:sbm
F.#770867

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - x

UNITED STATES ex rel.
MARSHALL P. SAFIR,

Plaintiffs,

v.

AMERICAN EXPORT LINES, et al.,

Defendants.

- - - - - - - - - - - - - - - - - - x

DECLINATION OF APPEARANCE

Civil Action No.
77 C 1093

The United States of America, by David G. Trager, United States Attorney for the Eastern District of New York, pursuant to the provisions of the False Claims Act, 31 U.S.C. §§231-235, hereby states as follows:

1. This is a qui tam action brought by plaintiff, Marshall P. Safir on behalf of the United States of America, as well as for himself pursuant to 31 U.S.C. §232(B).

2. The United States of America, pursuant to 31 U.S.C. §232(C), hereby declines to enter this action.

3. In commencing this action, plaintiff Safir has provided the Department of Justice with a copy of his Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia, and a copy of the Appendix thereto, which he has stated comprises his disclosure, pursuant to 31 U.S.C. §232(C), of substantially all the pertinent evidence and information material to the effective prosecution of this suit.

4. Based upon an examination of this material, the United States has concluded that the central issue of plaintiff Safir's allegations in this action is presently

being litigated in the United States District Court for the District of Columbia in an action styled Marshall P. Safir, plaintiff v. Juanita M. Kreps, et al., defendants, Civil Action No. 74-1474. See Safir v. Kreps, 551 F.2d 447 (D.C. Cir. 1977), petition for cert. filed, 45 U.S.L.W. 3733 (U.S. May 10, 1977) (No. 76-1505).

Dated: Brooklyn, New York
June 21, 1977

Respectfully submitted,

DAVID G. TRAGER
United States Attorney
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

By: Elaine Buck
ELAINE BUCK
Assistant U. S. Attorney

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SIR:

PLEASE TAKE NOTICE that the within will be presented for settlement and signature to the Clerk of the United States District Court in his office at the U. S Courthouse, 225 Cadman Plaza East, Brooklyn, New York, on the ____ day of ____________, 19____, at 10:30 o'clock in the forenoon.

Dated: Brooklyn, New York,
________________________, 19____

____
United States Attorney,
Attorney for ________________
To:
____
____
____
Attorney for ______________________

SIR:

PLEASE TAKE NOTICE that the within is a true copy of ____________ duly entered herein on the ____ day of ______________ ______________, in the office of the Clerk of the U. S. District Court for the Eastern District of New York,

Dated: Brooklyn, New York,
________________________, 19____

____
United States Attorney,
Attorney for ________________
To:
____
____
____
Attorney for ______________________

Civil Action No. 77 C 1093

UNITED STATES DISTRICT COURT
Eastern District of New York

UNITED STATES ex rel.
MARSHALL P. SAFIR,
Plaintiffs,

—Against—

AMERICAN EXPORT LINES, et al.,
Defendants.

DECLINATION OF APPEARANCE

DAVID G. TRAGER,
United States Attorney,
Attorney for U.S.A.,
Office and P. O. Address,
U. S. Courthouse
225 Cadman Plaza East
Brooklyn, New York 11201

Due service of a copy of the within ____________ is hereby admitted.

Dated: ________________________, 19____

____
Attorney for ________________

FPI-LC-5M-8-73-7355

Elaine C. Buck, AUSA
330-7100

DEPOSITION SUBPOENA TO TESTIFY OR PRODUCE DOCUMENTS OR THINGS

A175

United States District Court

FOR THE

Eastern District of New York

CIVIL ACTION FILE NO.

MARSHALL P. SAFIR
On Behalf of the United States of America
Plaintiff,
vs.
AMERICAN EXPORT LINES, INC., et al
Defendants

77 Civ. 1093

TO
Marshall P. Safir
41 Flatbush Avenue
Brooklyn, New York 11217

YOU ARE COMMANDED to appear at the offices of Kirlin, Campbell & Keating Room 3161, 120 Broadway in the city of New York on the 28th day of September 1977, at 11:00 o'clock A. M. to testify ~~on behalf of~~ at the behest of United States Lines, Inc.

at the taking of a deposition in an action pending in the United States District Court for the Eastern District of New York, entitled as above ~~and bring with you~~[1]

Dated September 22, 1977.

KIRLIN, CAMPBELL & KEATING
Attorneys for Defendant

120 Broadway
New York 5, N. Y.

Lewis Orgel, *Clerk.*

By *Deputy Clerk.*

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[1] Strike the words "and bring with you" unless the subpoena is to require the production of documents or tangible things, in which case the documents and things should be designated in the blank space provided for that purpose.

RETURN ON SERVICE

Received this subpoena at on
and on at
served it on the within named
by delivering a copy to h and tendering to h the fee for one day's attendance and the mileage allowed by law.

Dated:
, 19

By

Service Fees

Travel	$
Services	
Total	$

Subscribed and sworn to before me, a this day of 19

Note.—Affidavit required only if service is made by a person other than a United States Marshal or his deputy.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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MARSHAL P. SAFIR,

Plaintiff, 77-C-1093

- against -

AMERICAN EXPORT LINES, et. al.

Defendants.

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United States Courthouse
Brooklyn, New York

June 27, 1977
4:30 O'clock P.M.

Before:

HONORABLE JOHN F. DOOLING, U.S.D.J.

NICHOLAS IANNELLI
ACTING OFFICIAL COURT REPORTER

PENGAD CO., BAYONNE, N.J. 07002 - FORM 740

APPEARANCES:

MARSHALL P. SAFIR,
Pro Se.

MESSRS. KIRLIN, CAMPBELL & KEATING
Attorney for Defendant U.S. LINES
BY: FRANCIS X. NOLAN, ESQ., of Counsel

MESSRS. BARRETT, SMITH, SCHAPIRO & SIMON
Attorney for Defendant PRUDENTIAL GRACE LINES
BY: PETER AGOVINO, ESQ.

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THE CLERK: Safir vs. American Export Lines, et. al.

MR. SAFIR: Pro se.

MR. NOLAN: Francis Nolan.

MR. AGOVINO: Peter Agovino.

THE COURT: Yes, sir.

MR. NOLAN: This is an application for an extension of time to thirty days after the United States has indicated whether or not to decline or enter a proceeding started by Mr. Marshal Safir, pro se, on behalf of himself and of the United States based on the Federal Fraudulent Claims Act, 31 U.S.C. 231 et. seq.

Since the time of filing the motion papers the Government has declined to involve itself in this proceeding on the grounds that all of the information forwarded to it by Mr. Safir -- substantially all of the information had already been in the hands of the Government in other proceedings.

THE COURT: May I read that?

MR. NOLAN: I think I have that right. It's in the affidavit,your Honor.

THE COURT: That is what I am reading.

MR. NOLAN: Paragraph 3,3 and 4 read together.

THE COURT: They don't say anything about that.

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I don't know what they think they're saying.

At any rate, they declined to appear. That is all I make out of it.

MR. NOLAN: Well, your Honor, I read it differently, but I don't think it is particularly--

THE COURT: How do you read it now?

MR. NOLAN: That Mr. Safir forwarded substantially all of the pertinent evidence and material to the effect of the prosecution of this suit and that the United States concluded that the central issue of plaintiff Safir's allegations in this action is presently being litigated in the United States District Court.

I took that to mean that the information -- the United States considered this information to be substantially within the --

THE COURT: Then the Government isn't making any statement, where this information, ifany, came from.

MR. NOLAN: Well the information as I understand it, your Honor, or were two items appended to the record in a petition before the Supreme Court. That is my understanding of the documents which were forwarded, your Honor.

THE COURT: Well, ok.

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MR. NOLAN: So since that time the United States has declined to involve itself in this proceeding. We requested thirty days after the answer of the United States to involve itself or not, the expiration of the sixty days, to either move or answer ourselves. Since the action or inaction by the United States within that time would resolve certainly a number of questions.

We have ourselves not challenged service in this situation which we don't believe is effective. The officers of the corporation were not served. The lawyers were mailed copies. We have not evidenced any desire installing this proceeding.

We're asking for the thirty days fromthe date of the United States Attorney's action in order to determine whether or not to move our answer. To that affect we have noticed Mr. Safir's deposition for this Friday to determine more of the nature of the so-called affidavit and complaint in this action. There are a number of elements which we findrather confusing, and we reply that given the additional thirty days, certainly a substantial part thereof,we could resolve this entire matter much quicker. Certainly after taking Mr. Safir's deposition.

In that respect we foresee having a number of serious objections to the affidavit and complaint itself which we would prefer to go into with the Court's permission in the deposition on Friday, so that we can more effectively consider our options to move our answer in this matter.

THE COURT: Yes?

MR. AGOVINO: My name is Peter Agovino. We represent the non-trade line defendants in this action.

THE COURT: Did you put a motion in?

MR. AGOVINO: I put an affidavit in. We also made a notice to enlarge the time to thirty days and I join in Mr. Nolan's application. We would be willing to serve an answer thirty days from the time that the Government signed.

THE COURT: You represent whom?

American and Prudential?

MR. AGOVINO: Yes, American President Lines, Prudential --

THE COURT: Yes, and what time are you asking for?

MR. AGOVINO: Thirty days from the time that the Government --

THE COURT: June 21st?

MR. AGOVINO: No. When did the Government put the papers in?

THE COURT: The Government put its papers in dated the 21st and filed it the 22nd.

MR. AGOVINO: We would ask until July 21st.

THE COURT: All right.

Now, you know what they want.

MR. SAFIR: Yes, sir, I do.

Your Honor, in a memorandum which supports the defendant's motion for enlargement of time they made much of the following statement: Of statute and these circumstances that they discussed in their memorandum raises substantial possibility that the complaint filed already herein may become a nullity or at least be drastically modified by the United States. This was the basic reason why they wanted more time to answer. It must have come as a surprise that the United States within a day or two thereafter declined to waive its appearance in the case in accordance with 31U.S.C.231 et. seq.

Under those circumstances I don't believe that in sitting on their hands until now, and they have thirty days, and in some cases the New York defendants had ten days longer than necessary according to this Court's rule, I don't think that it would be fair to me to be unanswered for any additional time on the basis of the simple complaint and affidavit that has been

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submitted.

THE COURT: Well, they say they could challenge the surface vic of process. What I am thinking, it might be a good idea to get that out of the way in exchange for giving them turnaround time in June. Is something going to happen that will shake this case into some kind of shape in the District of Columbia proceeding?

MR. SAFIR: Not the D.C. Proceedings, your Honor, because there is as you know a writ of certiorari in the Supreme Court.

THE COURT: What is that from?

MR. SAFIR: That is on an administrative procedure action.

THE COURT: That is the one that Judge Friendly got them into expediting?

MR. SAFIR: Judge Friendly shook them up and created the expedition.

On the basis of that --

THE COURT: I forget now, but that did not end quite the way you wanted it to end?

MR. SAFIR: Well, it's starting to end the way I wanted it to end. It would appear now that the Government in its hearings and in those findings which are factual and which are not subject to relitigation in

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the courts, has decided that the criteria of the Safir Steamship Lines was such that the law was violated, factually determined, and that no basis exists under the Supreme Court decision to relitigate in the Courts the administrative finding in that regard.

So we passed all that and we are now in a damage action separate and distinct from any administrative procedure action or any requirement on the part of the Secretary of Commerce to do anything. This is a fraud action. This is for money damages to the United States, and as such by precedent moves rapidly in the Courts. Delay at the present time -- undue delay -- I think is not called for and I ask that if there is any extension granted for service or otherwise, that it be limited to ten days and not to the thirty days.

THE COURT: What about the process question?

They said that you didn't really serve them, just mailed copies of the process, or Mr. Levine mailed copies of the process to the lawyers for the various defendants.

MR. SAFIR: Instead of to the officers of the corporation?

THE COURT: Instead of serving the process personally on the officers of the corporation.

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MR. SAFIR: Your Honor, the answer to that is--

THE COURT: If they wanted to get sticky they could make you do that,you know?

MR. SAFIR: Yes, they made me do other things over the years, but my feeling is that somewhere along the line reason should prevail and that if you are going to grant relief to them in return for their accepting service, that is not be on the basis of the number of days that are outlined here.

THE COURT: Nothing is sillier than watching a lot of process servers running around serving processes on directors of corporations, but they have a right to insist on it and indeed many corporations, as you probably know, will not permit counsel to appear for them until the corporation has been properly served, so if I could work out an arrangement here in which you gentlemen would agree on appearance, and on a date for serving answers, I think we'll all be at an advantage.

Now, you gentlemen ready to do that?

MR. NOLAN: We'll agree to appear. We certainly are willing to not challenge service --

THE COURT: How about coming a little bit toward Mr. Safir in view of the early resolution of this U.S.

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question? Why don't you settle with him for fifteen or twenty days?

MR. AGOVINO: The only thing is we have this Friday's deposition and we understand there is some what of a fact finding problem here.

THE COURT: What he really wants to get is the answer, at least to make sure we get the answer in here and get the case moving.

Now if I understand it -- it sounds a little bit as though in this first deposition you will be shooting for data which you think is a complete response or complete bar to the conduct of the action?

MR. NOLAN: That's correct.

THE COURT: So that they won't be -- they'll be taking your testimony, but they will not be resting on their oars so far as their threshhold objections to the proceedings are concerned.

MR. SAFIR: Your Honor, I would like to express my feeling that if any time is going to be granted in a delay in the answer, that the deposition be put over until such answer is filed.

MR. NOLAN: Your Honor, that puts us right back to square one.

THE COURT: What they want to find out from you

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really, in a way they're saying this is like the old fashioned procedure in New York, I guess they abolished it, you take the deposition for the purpose of framing an answer. What they want to know is have they any defense, any threshhold defense, is that it?

MR. NOLAN: We already know we have some, your Honor. We want to resolve the methods of some other defenses including the jurisdiction of this action.

THE COURT: That has to do with the States -- who is the source of the information, etc., and you think that is independent of any declination on the part of the Government?

MR. NOLAN: There are some things that we can raise at any time.

THE COURT: I'm talking about the Government having declined to participate.

MR. NOLAN: There are some we can only raise after the Government declines.

THE COURT: What?

MR. NOLAN: There is one in particular that we can only raise after the Government declines.

THE COURT: What is that?

MR. NOLAN: Regarding the supplying of additional information.

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THE COURT: Additional information?

MR. NOLAN: Right.

As a basis for proceeding in this suit.

THE COURT: I don't understand that.

MR. NOLAN: Pursuant to the statute.

THE COURT: That is not an additional information.

MR. NOLAN: Information not in the possession of the Government.

THE COURT: Yes.

MR. NOLAN: And which is not a bar to the Government proceeding, from my understanding of the statute, but is a bar to the plaintiff from proceeding.

THE COURT: That is what you're after?

MR. NOLAN: That is one element of what we're after.

With all due respect to Mr. Safir, you know his affidavit and complaint, I think it would fail on a number of basic rather simple unimportant respects.

MR. SAFIR: I must state at this point, your Honor, that it is my intention now to engage counsel to handle the case since in certain respects -- in fact I even cited cases where to represent the United States one must have a license, and I haven't got a license, so therefore I must engage counsel immediately.

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MR. NOLAN: The only reason I brought those other points up about the form of the affidavit and the complaint and the independent numbering and other aspects -- we hadn't really gotten into that and chosen to raise motions in that regard.

THE COURT: Let me put it this way. I will grant you the time you want on the condition that -- that is thirty days from the 21st of June -- on the condition that the defendant corporations appear in the action and that the deposition of Mr. Safir be put off until after the answer has been deposed. Now, I don't go along with your idea that there is a rule or statutory right to take depositions for the purpose of framing an answer. I think generally speaking you should do your own answer.

MR. NOLAN: It may not be an answer in that regard.

THE COURT: We may have to go on anyway. If the complaint is insufficient, well, the sooner we all find it out the better, particularly if Mr. Safir is confirmed to his belief that he is going to have to get himself a lawyer in here, then you will be dealing with someone who talks your language.

All right?

MR. AGOVINO: The way we have it, your Honor, we'll have thirty days to either appear or move to dismiss the complaint?

THE COURT: To do your pleading, whether it be by motion or by response, but no deposition of Mr. Safir until you get passed that stage.

MR. AGOVINO: Ok.

MR. SAFIR: And that is from the 21st of June?

THE COURT: Yes.

MR. AGOVINO: And the representation as to the appearance I understand is no longer --

THE COURT: That is the condition on that.

MR. AGOVINO: That we'll either appear or move to dismiss.

THE COURT: No, but your appearance will be an appearance that would remove any question of whether or not the Court had jurisdiction over you, personal jurisdiction over you, and that is exactly whether you answer or move, because you are getting an extension of time to do both.

All right?

MR. SAFIR: In one regard, your Honor.

THE COURT: Meanwhile if you get your lawyer even faster he may decide to amend your complaint before they move.

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Then he will be in touch with them?

MR. SAFIR: Yes, sir, he will.

One other question, before I leave, your Honor, and that is one of the parties we're unable to serve.

THE COURT: Who is that?

MR. SAFIR: This is Bloomfield Steamship Company.

THE COURT: And what did I hear about that? Isn't that in receivorship or something?

MR. SAFIR: Well, they're out of business since 1966, but they did appear here by counsel in a related case as late as 1970.

THE COURT: That brings you right up to date?

MR. SAFIR: Inthis --a Miss $\overset{O'}{B}$ikous (phonetic) represented them at the time.

THE COURT: Who?

MR. SAFIR: $\overset{O}{B}$ikous.

I have a copy of the transcript of that day's hearing whereshe appeared here, and if you would like to see it, sir?

My problem here is she refuses to accept service under any --

THE COURT: Very discreet woman.

MR. SAFIR: For the Bloomfield Steamship Company in 1977 after appearing in your courtroom in 1944.

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THE COURT: 74?

MR. SAFIR: 74, excuse me.

THE COURT: I got the impression that there was some proceeding --

MR. NOLAN: They're no longer in business, that is what I understand, your Honor.

THE COURT: Weren't they in receivorship in one of the Chapter proceedings here?

MR. NOLAN: I wasn't aware of that.

THE COURT: In the Southern District maybe?

MR. SAFIR: I am not aware of it, your Honor.

THE COURT: I'll track them down, but there is nothing I can do to force the lady to appear for them.

MR. SAFIR: Or to accept service for them?

THE COURT: No, I can't do that.

MR. SAFIR: I'll take that up with counsel too when I get him.

THE COURT: You have to find out where they are. If they're out of existence, they're out of existence, then you usually, depending on where they're incorporated, they have a corporate after life, and you have to serve

Secretary of State

sections of estates and people like that.

MR. SAFIR: I see.

THE COURT: Or the last directors, that sort of

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thing. It gets pretty complicated. Usually at that point it's not worth it. They have no more money.

MR. SAFIR: And they're only involved here to the tune of maybe five or six hundred thousand, anyway.

THE COURT: The box car figures come to you very naturely, Mr. Safir.

MR. SAFIR: They flow, your Honor.

Thank you, your Honor.

THE COURT: Right.

There is a Qui Tam decision in our Court of Appeals the other day. You haven't received a copy of it?

MR. SAFIR: Thank you.

Thank you, your Honor.

THE COURT: Right.

See you next time around.

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- X

MARSHALL P. SAFIR, Pro Se, and on
behalf of the UNITED STATES OF AMERICA, :

Plaintiffs, : Dooling, J.

-against- : 77 Civ. 1093

AMERICAN EXPORT LINES, INC. :
AMERICAN PRESIDENT LINES
LYKES BROS. STEAMSHIP CO., INC. :
MOORE McCORMACK LINES, INCORPORATED
UNITED STATES LINES, INC. :
FARRELL LINES, INC.
BLOOMFIELD STEAMSHIP CO. :
PRUDENTIAL GRACE LINES, INC.
PRUDENTIAL STEAMSHIP CO., INC., :

Defendants. :

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Deposition of Plaintiff MARSHALL P. SAFIR, held at the offices of Kirlin, Campbell & Keating, Esqs., 120 Broadway, New York, New York, on the 28th day of September, 1977, at 11:15 A.M., pursuant to Subpoena, before Philip C. Rizzuti, a Notary Public of the State of New York.

Walter Holden, C.S.R.
President

Esquire
Reporting
Company
Inc.

41 East 42 St.
New York
10017
New York
212 687-8010

A195

APPEARANCES:

KIRLIN, CAMPBELL & KEATING, ESQS.,
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120 Broadway,
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BY: FRANCIS X. NOLAN, ESQ.,
of Counsel.

KOMINERS, FORT, SCHLEFER & BOYER, ESQS.,
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BY: J. FRANKLIN FORT, ESQ.,
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Attorneys for American Export,
17 Battery Place,
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BY: JOHN R. SHENEMAN, ESQ.,
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APPEARANCES (Continued):

FOLEY, HOAG & ELIOT, ESQS.,
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10 Post Office Square,
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BY: ARTHUR G. TE[illegible]EGEN, ESQ.,
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BERGSON, BORKLAND, MARGOLIS & ADLER, ESQS.,
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Prudential Grace Lines and Prudential
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11 DuPont Circle Northwest,
Washington, D.C. 20036,

BY: WARREN L. LEWIS, ESQ., of Counsel

-and-

ROBERT T. BASSECHES, ESQ.,
734 15th Street Northwest,
Washington, D.C. 20005.

MR. FORT: May I make a note for the record that Mr. Safir has a recorder in the conference room and is going to take a recording of all the proceedings here.

May I ask you, Mr. Safir, do you agree to give us a copy of the recording?

MR. SAFIR: Yes, I do. I would appreciate it, however, if anybody here would remind me at twelve noon to turn the thing over, so that we can maintain the continuity of the tape.

MARSHALL P. SAFIR, residing at 41 Flatbush Avenue, Brooklyn, New York, having been first duly sworn by the Notary Public, testified as follows:

EXAMINATION BY
MR. FORT:

Q Mr. Safir --

A The name is Safir.

Q I am going to start by reading you a sentence from Paragraph 4 of your affidavit filed in connection with your motion to consolidate an amendment, Cases No. 68 Civil 643 and 77 Civil 1093 in the United States District Court, Eastern District of New York.

MR. BASSECHES: Mr. Fort, Mr. Safir does not seem to have a copy before him, and I am prepared to give him my copy.

THE WITNESS: I appreciate that, Mr. Basseches.

Q In this affidavit you state, in Paragraph 4, on various dates --

A One moment, sir. I am on the wrong page. Page 4, you say? Yes.

Q "On various dates in 1971, in connection with Hearings (MSB Docket S-243) before the Maritime Subsidy Board, I made available to the government through Michael J. McMorrow, M-c-M-o-r-r-o-w, Esq. of the Federal Maritime Admistration, all the information in my files and the files of Safir Steamship Lines."

In your affidavit, are you there referring to all the information necessary to support your false claims act suit, namely your Suit 7 Civl 1093?

A All the information I had at that time, but not all the information that formed the basis of that suit.

Q May I now ask you, if you did not supply all the information at that time, what new information you have supplied since that time and what it consists of?

A I have supplied now to Mr. McMorrow since that time?

Q Have you supplied any to any other agent, employee or representative of the government?

A I have offered it. It has not been requested of me.

Q Will you tell us what you have offered to them?

A Well, I haven't offered anything specific to them. I have information which now based on the fact that this case is filed will be brought forward.

Q I now ask you to give us the information which you intend to bring forward.

A Well, upon information and belief, at some time in 1968 an arrangement was made between members of this group and the then Republican Party for the consideration of a considerable sum of money, to see to it that the subsidies which formed the basis of a complaint filed in 1968, in June, that that case, if the Republican Party was elected to office, would be made difficult for the plaintiff to succeed.

Q May I ask you whether you have any documents to support this arrangement that the Republican Party had?

A I have no documents, but I have -- that my information came from -- I will put it this way. It came in 1973, about October of 1973, by a telephone call from a newspaper reporter who asked me whether I knew anything about a deal involving approximately $7,000,000 in which --

and he mentioned by name one Spyros Skouras, Senior, had through someone in the Republican Party -- and I am not sure whether it was Mr. Stans that he mentioned by name or not -- had arranged for this $7,000,000 to be paid over, over a period of time, to parties within the Republican Party for the purpose of settling or disposing of the antitrust case which was then filed by the Trustee in Bankruptcy of Safir Steamship Lines, and also my case, which at that time was in the nature of mandamus and which was the original action that I filed in 1968.

Q Could you tell me the name of the newspaper reporter?

A The name of the newspaper reporter was -- his name was Louis Kohlmeyer, and I understand that he is a Pulitzer prize winning reporter who worked for the Wall Street Journal at the time I first knew him, and at the time he called to inquire about my information, about this information, was working for the Chicago Sun Times syndicate in Washington.

I told him at that time that like a husband whose wife was cheating, I would be the last to know the answer to his question, as to whether I had any information on the subject. My answer to him was no, but from that point on I knew that there would be a point in this litigation when under a False Claims Act amendment, in one case or in a new case filed as this one is here, that we are here today, filed last May, that new information would be supplied to the government in order to firm up the specific intent to defraud, which I felt as far as my case was concerned, this form of contribution would represent.

Q You say this inquiry was in 1973?

A Yes, sir.

Q Did you ever tell anyone in the government about the inquiry?

A No.

Q Why didn't you tell them?

A Because at that time I had no proof, and I had no basis on which to act, except and distinct from perhaps a Special Prosecurtor's office and others who were interested at that time.

Mr. Kohlmeyer mentioned, however, if this will be helpful to you, Mr. Fort, and it might be, that certain of this information that he was basing his call to me on was based on leaks from the Special Prosecutor's investigation in the Nixon impeachment case. Make the most of it.

Q So that what you are saying is that the information in essence was in the possession of the government at the time he called you, because he had heard about it through leaks from the Special Prosecutor?

A If you think so. As I said, make the most of it. I don't think so. I don't think that that could be considered in the hands of the Attorney General, Department of Justice, since they were not involved in the Special Prosecutor's office.

Q Were any other companies mentioned by this reporter?

A Not by name.

Q Now, return to the affidavit, Mr. Safir.

A Yes.

Q Paragraph 5, Page 7.

A I seem to have a problem there, Mr. Fort. Paragraph 5?

Q Five begins on Page 6 and it goes on to Page 7.

A I beg your pardon. Go right ahead, sir.

Q I would like to read you a sentence from that paragraph, starting off with "Thus, the conduct and transactions which were in issue before the Maritime Subsidy Board, as a result of the 1968 complaint and are now res judicata, are the same as which formed the basis for the proposed amended complaint."

Can you tell me whether there is anything else that you -- any other information or facts, other than what you have just recited, in respect of your telephone call from the newspaper reporter, which you have supplied to the government since 1968 that have a bearing, a materiality to your claim under the False Claims statute, or are the facts the same now as they were in 1968?

A Well, the discovery of information took place since 1968 which formed the basis of the -- which does form the basis of the amended complaint, and that is as I stated elsewhere in the affidavit, I believe.

By the way, before I continue with this, I would like to state that the only affidavit that I think I should be discussing with you here is the affidavit made in connection with the original complaint in May. This affidavit which forms the basis of the amended complaint is not at issue, is not covered by this subpoena.

Q Well, let me put the question the other way.

Is the sentence that I just read you a true statement?

A "Thus, the conduct and transactions which were in issue before the Maritime Subsidy Board, as a result of the 1968 complaint and are now res judicata, are the same as which formed the basis for the proposed amended complaint."

And once again, I will say at this particular time that I will not go into a discussion of what forms the basis of the proposed amended complaint. It is not the subject matter of this subpoena.

Q The subject matter of the deposition is to find out what you base your false claims complaint on.

A That is what I am here for.

Q And I am asking you a question that relates to that claim under the False Claims Act.

A No, you are asking for something which goes to the proposed amended complaint.

Q That is correct.

A I am not prepared to answer anything here that goes to the proposed amended complaint. I am very happy to be here to answer anything that goes to the complaint filed in 77 C1093. It has its own affidavit, as you know.

Q Well, I will ask you, then -- strike that out.

Mr. Safir --

A Safir, please

Q Safir, I am sorry. You are not represented by counsel here, but in the case of taking a deposition you are entitled to object to a question that is asked, but answer it under protest and then argue it at a later date, as to whether or not the question is proper and whether it should be made a part of the record.

Otherwise, if you will not answer questions that are relevant, we think are relevant in the case, it will become necessary for us to go before the Judge and ask him to require you to answer it.

A I would be happy to go before the Judge on anything that I object to. As far as answering you, there is no problem there.

Q May I then confirm that you are refusing to answer that question?

A I am objecting on the question, on the grounds that it is immaterial and irrelevant, in regard to 77 C1093. The basis of the subpoena under which I am here --

MR. BASSECHES: Apart from the objection, Mr. Safir, do I understand, having noted that objection, that you are in addition refusing to answer the question except if compelled by the Court?

THE WITNESS: If the Court so desires me to answer it, I will be happy to answer it.

MR. BASSECHES: My question is, are you refusing to answer it unless so compelled by the Court?

MR. SAFIR: I am refusing to answer it unless the Court decides that I should.

MR. BASSECHES: Thank you.

Q Let me get to the case which you --

MR. BASSECHES: May I have that document back, please?

THE WITNESS: Sure (handing).

Q Getting back to our case, under 77 C1093 --

A Yes?

Q -- which is the False Claims Act suit filed in May of 1977 -- for the record, and to point out the question we have here, I would like to show you that the affidavit that I was questioning you about has been filed in 77 Civil 1093.

A Yes. For the record --

Q So that, is it still your position that the question I asked you is not relevant to that lawsuit, to any other lawsuit?

A It is -- that is correct. It is not relevant. I won't say it is not relevant. I will say this at the present time. I will make this statement for the record, as well, that the basis on which you people were permitted additional time to answer, as the Secretary to the Judge stated to me, was that -- and I granted it and I did not object when you received this additional time -- I had a specific understanding with Mr. Bachman that only subject matter pertaining to 77 1093 was going to be the subject of the subpoena, and I am standing on that position which I took with the Judge's secretary at the time.

Q Well, is this affidavit not relevant to that lawsuit? It is captioned in that lawsuit.

A The affidavit here is relevant to the amended complaint. The statement here of the United States of America, Marshall P. Safir, and Marshall P. Safir, Plaintiff, against American Export Lines, Inc., et al., is stated in the affidavit only for the purpose of the discussion of consolidation, and has nothing to do with the subject matter, either of the complaint or the affidavit in 68C643.

This was my understanding with the Judge's secretary at the time, that I agreed to allow the defendant here an extension of time, and only for that purpose.

Q Is it fair to state that you are refusing to answer any question with relation to this affidavit; any question?

A The answer to that is that where the information that you are asking, and you may find in the affidavit in 77 C1093, and perhaps it would save time if you would look there for it rather than where you are looking.

I will answer anything that has to do with the affidavit made in 77 C1093. I will not answer anything at this particular time in relationship to anything in regard to the amended complaint in 68C643, and I thought that was understood by all parties before I came here.

Q Am I then to assume that you are not relying on anything stated in that affidavit with reference to 77 C1093?

A I don't understand the question, Mr. Fort.

Q You are refusing to answer any question based upon this affidavit?

A Yes. This affidavit is not subject matter for this subpoena.

Q Now, just to get back to straighten the record out a little bit, I read you a sentence from the affidavit and I asked you whether it was a true and correct statement.

Would you give me your answer to that again?

A I don't recall answering the question.

Q The statement that I read to you was, "Thus, the conduct and transactions which were in issue before the Maritime Subsidy Board, as a result of the 1968 complaint and are now res judicata, are the same as which form the basis for the proposed amended complaint."

A The answer is the same; I will not answer anything that has to do with that affidavit at the present time.

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Now, if you can find in the original affidavit similar wording, or similar thoughts, I will be glad to address it.

Q I am divorcing myself from any affidavit that you filed before, and I am just asking you whether that is a true statement.

A I am here to be questioned on the complaint and the affidavit, and to be helpful in any other way that I can be within the groundrules. I don't think that that is helpful at the present time, because it gets into the area that will be covered, but not at the present time.

Q Let me ask you this question. The affidavit and complaint No. 77 C1093 relates to conduct and transactions which were in issue before the Maritime Subsidy Board as a result of a 1968 complaint?

A Yes, that is true.

Q And they formed the basis for the complaint in 77 C1093?

A Yes.

Q Now, to get again back to 77 C1093, and these questions relate solely to that.

A Good.

Q When you filed that complaint, you made a disclosure to the United States Attorney of evidence and information which you thought was relevant to the False Claims Act suit.

A Yes. I did so by filing a notice of pendency.

Q You attached to your complaint a copy of which you designated Attachment A, which is a petition for writ of certiorari to the United States Court of Appeals, for the District of Columbia, Court No. 76 1505, on to that complaint.

With that complaint you also filed as Attachment B an appendix to your petition for the same writ of certiorari in 76 1505.

May I ask you whether these two documents contain all the evidence and information in your possession, other than this telephone conversation with Mr. Kohlmeyer, which are material to the effective prosecution of the case 77 C1093?

A First, to answer it this way, I will take the second part first. The telephone conversation with Mr. Kohlmeyer was very much in mind in my notice of pendency letter to the Attorney General and to the United States Attorney, because I stated in that letter that there was other information which I would be happy to cooperate with by giving on the basis of the government deciding what it wanted to do in the case.

The government, as you know, waived or disinclined to appear in the case, leaving open for me now the discovery procedure based on that telephone call and which will form the basis of some subpoenaes which I will serve on your people early next week.

Subpoenaes, I understand, duces tecum, are with regard to the certificates of record of the defendant lines in regard to campaign contributions and other pertinent matters which would evolve from that particular telephone call, going to the area of the specific intent to defraud the government of these defendants.

So that is the answer to the second part of the question.

The first part of the question is that as of the time that I wrote the letter, or notice of pendency, the information, other than what I just stated, was all that I had in my possession which was helpful to the United States.

Q You speak of a letter concerning pendency. Did you send copies of that to any of us?

A I am not sure, but I will be happy to send you copies immediately.

Q Do you have copies with you?

A I don't have any of my records with me. As a matter of fact, I think if this continues on, I have a copy in my car and I will be glad to make copies of it and give it to you.

Q Was that letter written at the time you filed your complaint in 77 C1093?

A Yes, sir, simultaneous.

Q Does that letter contain any new information?

A Other than the new offer of additional information, beyond what you have set forth as the information being filed with the complaint in 77 C1093, other than the offer of new information, it supplies no other new information.

Q Now, what additional information are you offering the United States, or did you offer them in this letter, or intend to offer them?

A The information that I set forth here. In answer to your question, in regard to the Kohlmeyer information.

Q And the campaign contributions?

A Well, the campaign contributions would be part of an official investigation of the Kohlmeyer information, and may I say, only a part of it. But it would be a part of it.

Q Is there any information that you have about campaign contributions that the government does not have?

A I don't know, and I will volunteer the following. I don't know that they don't have all of the information in regard to the campaign contributions, and I don't know whether that is not a subject matter of a Grand Jury investigation going on right now. I don't know.

Q Mr. Basseches would like to ask you some questions.

A Certainly.

EXAMINATION BY
MR. BASSECHES:

Q Mr. Safir, you made reference to a telephone conversation in October of 1973 with respect to a Louis Kohlmeyer, which is the subject of some discussion on the transcript of this deposition.

Do you have written notes of that telephone conversation?

A No, sir, I do not.

Q Do you have any transcribed notes of that telephone conversation?

A No, sir, I do not.

Q So, the only formal recollection that you have of that telephone conversation is your own personal recall; is that correct?

A That is correct. I did, however, meet with Mr. Kohlmeyer once thereafter in regard to the conversation, and I told him at that time -- I met him at his office, which was at the National Press Building in Washington, and I told him at that time that if he wished to pursue the story, since it was so, I thought bizarre, at the time, but if he wished to pursue it, I would cooperate with him in any way that he wanted to. Whether he pursued it or not, I don't know. But he did not ask me for any cooperation.

Q I take it from that last statement that you did not in fact cooperate with him.

A Only because I wasn't asked.

Q Do you have any notes or transcriptions, or any other form of pertinent records, of your meeting with Mr. Kohlmeyer?

A No, I do not.

Q I believe in response to quite recent inquiry of Mr. Fort -- by recent, I mean towards the latter of his questions to you today -- you identified two categories of information which you provided or tendered to the government as of the time of filing your affidavit and complaint in 77 C1093.

One of those was the Attachments A and B, and the other was, the other that you had in mind, I believe you testified, was information pertaining to or arising out of your 1973 conversation with Mr. Kohlmeyer; is that correct?

A That is correct.

Q Is there any other information not either identified in those attachments or arising out of that 1973 telephone conversation that you had that supports your complaint in 77 C1093?

A The answer is no.

MR. BASSECHES: I have no further questions.

I think Mr. Lewis is going to pursue a few further questions on the issues I was examining you on.

THE WITNESS: Yes, Mr. Lewis.

EXAMINATION BY
MR. LEWIS:

Q Mr. Safir, before we go back to the telephone call, Mr. Fort asked you, or attempted to ask you, a series of questions based on an affidavit you filed in 77 C1093; is that correct?

A Anything he asked me in connection with an affidavit 77 1093, I would be happy to answer.

Q Oh, we have -- this is the affidavit I am referring to, dated September 13, 1977.

A Well, that is not the affidavit I am referring to.

Q Isn't it correct that you filed an affidavit in 77 1093?

A I explained the nature of the front page of that. That has to do only with the point of view of consolidation. It only has to do with going to the motion for consolidation.

Q But you are aware that this motion was filed in your 77 action?

A This was not filed in the 77 C action, it is the subject matter of a motion to be consolidated with 68 C643. The affidavit was filed in 68 C643.

Now, once the motion is granted I will be happy to talk about anything you want in connection with that second affidavit.

Q Our information is that this affidavit was filed in both the '68 and '77 actions.

A We have differences of opinion about it. My intention was never to file an affidavit in the earlier action. That had its own affidavit attached.

Q But you are seeking by this affidavit to support a motion to consolidate the 1977 and the 1968 actions; is that correct?

A To the extent of the convenience of the Court. Frankly, I'd just as soon drop the motion to consolidate and stipulate to it at the present time. I don't consider it to be helpful in any circumstance, but be that as it may, there is no -- at the present time -- relationship that we are here to discuss today that goes [illegible] ne separate affidavit.

I am here to discuss the affidavit in 77 1093.

Q Mr. Safir, you are not represented here today by counsel. I think you should be aware that when you refuse to answer a question, as you have done here, you may be libel later, if the Judge decides that you should have answered that question, to pay the cost of our attending this deposition, coming back and redeposing you.

Are you assuming that risk?

A I must, I guess.

Q You realize; we just want you to know that.

A I appreciate your pointing it out to me, because I did not know. But I must assume it, because I think I am right on the subject, and if the Judge finds me otherwise, then I will have to pay the penalty.

Q Mr. Safir, it is almost twelve o'clock and you may want to turn your tape.

Off the record.

(Discussion off the record.)

BY MR. LEWIS:

Q Mr. Safir.

A Yes, Mr. Lewis.

Q We are now back on the record.

A Yes.

Q When was the first time you ever spoke with or ever met with Mr. Louis Kohlmeyer?

A I think it was 1971 or 1972. It was in connection with a book that he had written called "Regulating the Regulators." It was a book about how in government these days, or those days, the areas of government which were supposed to be regulated were in fact controlled by the people that they were supposed to regulate; a theory which has become fairly well known by this time.

But it did have a bearing on this case, I felt, and even before I had any information from him about this Skouras comment, and so we discussed his book. And the purpose at that time was to write an article about the Safir case in 1970 or '71, in its then posture, and

I did not see him again for at least a year or two, until I got that telephone call.

Q Where was this 1971 discussion?

A In the offices of the Wall Street Journal in Washington.

Q Was this in their downtown office?

A It was downtown Washington at that time. It is the only one that I knew of.

Q Why had you gone to his office?

A As I said, because I had written him or called him at that time because of the unique nature of what he was writing about, I felt was so pertinent to what was going on with the Safir case at that time, and the administrative agency of government was so much in the hip pocket of industry, that it represented just an additional corroboration of his thesis, and if he wanted to write any article in the Wall Street Journal at that time, please feel free to do so. I could use the publicity at the time.

Q How did you become aware that he was interested in this theory?

A From the book itself.

Q His book had already been published? You had read his book?

A Yes.

Q You had called him?

A Yes. I think that I called him.

Q Do you remember that you called him?

A I am not sure.

Q Do you remember how the meeting was set up? Was it an appointment?

A It was by appointment, yes. Perhaps it was on the basis -- as I do a great many times, I may have said, the next time I am in Washington would you mind if I got in touch with you? Apparently that is the way I did it.

I went up to his office and he came out, and I discussed things for a period of time. And at that time I gave him whatever we had in the way of Court of Appeals decisions, and whatever was in my file at the time, which might have been instructive to him if he wanted to write anything about it. He never did.

Q Do you remember what you gave him specifically at that time? You had a fairly substantial file.

A Well, I would say --

Q You did not give him the entire file?

A No. I gave him the copies of the Court of Appeals decisions. We had Safir 1 and Safir 2 by that time, an I don't know what else I gave him. But I gave him plenty of kudos about his book, because I felt it was very pertinent to the situation in the Maritime industry.

Q Do you remember how long the conversation took?

A Not more than half an hour.

Q And did you arrange to meet again, or talk to each other again?

A No. I left it to him, if he wanted to, and he did not, apparently, because I did not hear from him for at least two years later.

Q Do you remember the date of the 1971 meeting?

A No, I do not.

Q Would you have any calendar or notes that would remind you of the date of that meeting?

A I might. I might. I never thought to look for it.

Q Do you keep personal calendars or notebooks?

A Yes.

Q Would they go back to 1971?

A Perhaps.

Q Where would they be kept, at home?

A Yes, at home.

Q Did you make any notes of that first meeting?

A No.

Q Do you have any written materials that relate to that meeting?

A No. I find I have a pretty good memory.

Q But you cannot remember the date?

A I can't remember the date, that is correct.

(Continued on next page.)

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Q Do you remember whether you had any other appointments on that day, that would have brought you to Washington?

A As a matter of fact, you are refreshing my memory. I believe that the hearings in MSBS 243 were going on at that time and it was at one of those dates that I was down there in those hearings, that I went over to see him.

Q Were you by yourself?

A Yes.

Q Did anyone overhear your conversation with Mr. Kohlmeyer?

A I don't know.

Q Were you in his office when you were talking to him?

A We talked in a reception room that they had at that time and they may still have it. He came out at that time to talk to me and we had this conversation. It took about, as I say, about half an hour.

Q Have you told anyone else, other than us, about this meeting?

A I have told several people, yes. In fact, over the years it has been the subject of several conversations that I have had.

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Q That is the 1971 meeting, you have discussed that meeting?

A Both the '71 and the '73.

Q And who have you discussed this meeting with?

A Which one, the first one?

Q The 1971 meeting.

A I don't recall, friends.

I made no secret of these meetings, I didn't keep it a secret.

Q Have you ever discussed it with a lawyer?

A Yes.

Q Which lawyer or lawyers?

A I will have to refresh my memory on that for you.

Q What can you use to refresh your memory?

A Just a few minutes.

Q Would you like to take a few minute break?

A Can we go onto something else and then come back to it?

Q We could do that.

A Because this may take a little more than a few minutes. I have to give you exactly which ones I discussed it with.

3 Q But you can remember that you did, you may be able to refresh your --

A My recollection is that I may have spoken to more than one lawyer about it, more than one of my own about it. As a matter of fact, I recall one right now. I discussed this with a lawyer who did not wind up representing me. Now, this question, is he my lawyer if I discussed these matters with him and he did not represent me.

I don't know whether you could call him my lawyer.

Q A lawyer?

A A lawyer, yes. I discussed it with a Robert Benjamin of the firm of Philips, Nizer, Benjamin & Crim. I told him of the Kohlmeyer incident.

Q And under what circumstances?

A At that time I wanted him to represent me. I wanted Benjamin or Nizer to represent me and this was last March or April.

MR. TELEGEN: Could we have a five minute recess.

(Discussion off the record.)

Q Other than lawyers and friends, have you discussed this 1971 meeting with anyone in a business

4 context?

A I don't recall.

Q Now, after the 1971 meeting, when was the next time you ever talked to or met with Mr. Kohlmeyer?

A To the best of my recollection, that was in 1973, about the time of the Watergate Hearings. After the summer hearings and before -- I would say September, October, in that particular time period in '73.

Q Do you remember the date of that conversation?

A No, sir, I do not. Just that within a 30 to 60 day period.

Q Where were you when you -- was this a telephone call?

A This was a telephone call from him to me, yes.

Q Where were you when you received the telephon call?

A The telephone call was received first in my office by my secretary and by then an employee of mine, William Chadwick who called me and told me that this fellow, Kohlmeyer called. Chadwick recalled that I had seen Kohlmeyer earlier, because he had been in my employ in '71 as well. He told me to call this fellow back, 5 I did, and there was no answer and then he called me back at home.

Q Mr. Kohlmeyer?

A Yes. Now, I think I tried to get him back at the Wall Street Journal, but he wasn't there and then he called me and he told me that he was no longer with the Journal, but with the Sun Times syndicate.

Q Do you remember what time of day you were called by Mr. Kohlmeyer?

A I think it was late afternoon.

Q Where was your office at this time?

A No, he called me back at home.

Q What office did he call?

A He called the office at 41 Flatbush Avenue, Brooklyn.

Q And where were you living at that time?

A I was living in 8 Southview Lane in Kingspoint, New York. So there was a relay of calls from my office to my home.

Q What are you using to place -- what information are you using to place the date of the call some time in September or October of 1973?

A My own memory. Just my recall because of the nature of what was going on at that time, the events

6 of the time and the timing of his statement that leaks are coming out of the Watergate Hearings and he went further, he went further on this thing, I haven't told you all that he told me.

Q Before we get into the actual conversation, I am just going for information that -- the information which you base your memory of the date of the conversation.

A I did not quite finish that question. I based it on the fact that the Watergate Hearings were on, that as a special prosecutor -- no, I wasn't even sure of that, that the Maritime, the head of the Maritime Commission had been called by the Watergate Committee.

He said at that time or a few days prior to that, Helen Bentley by name had been called by the Watergate Committee, so I placed the timing to be more accurate, perhaps others can too, to place it about the time that she was called before the Watergate Hearings.

Q So the conversation was after she had testified?

A After she testified and certain newspaper type leaks had emanated.

Q How did the conversation begin, who spoke first?

A He did. He said, do you remember me, I said, of course I remember you.

Q Could you give us the rest of the conversation as you remember it?

A Then he started to ask me questions. In fact, he said, have you felt that you are having a very difficult time in making progress on your case and I said, I sure have felt it.

Q What was your understanding of what he meant by your case?

A The case that I was pursuing in the Maritime Subsidy Board, S 243, which was the outcome of my initial action in 68 C 643 in the Eastern District of New York.

Q He asked you a question and you responded. Was that your only response to the question?

A Yes. I said, why do you ask. That was my next question.

Q What was his response?

A He said, well, we are getting words and I am quoting now on the basis of a conversation of six years ago, so there is some license or liberty involved.

Q Is it six years or four years ago?

A Excuse me, '73 is four years ago. I was thinking of the first one. Anyway, in connection with the one of four years ago, I asked him, why do you ask

8 and he said, because there are certain things emanating from the Watergate Hearings that show a relationship between your case and certain things that have happened in regard to campaign contributions and things like that.

He said, do you know of a payoff to Nixon at that time, he said, in the neighborhood of five and a half million dollars. I said, unheard of and I said, I would be the last to know if that were the case, because I mentioned in connection with being like a cuckolded husband, always being the last to know.

He said, did I see any relationship between the City of Baltimore and the problems I was having. I said, no. I said, why do you bring that up. He said, well, isn't it interesting to you that Andrew Gibson and Helen Bentley and also the Vice President of the United States comes from Baltimore.

I said, well, I cannot see what the relationship is. He said, well, there is evidence involved which we are hearing about that connects a payoff of this five and a half million dollars on your case, to the relationship of Andrew Gibson, who was a vice president of Prudential Grace Lines, and an employee of Skouras coming into the administration as the Maritime Administrator. A relationship between Helen Bentley, a Baltimore reporter, becoming the head of the Federal Maritime Commission and the vice president.

So, I said, I still cannot see the relationship between the vice president and these people. He said, well, Skouras is a Greek. I said, that is right, or Greek extraction. He said, well, we hear it down here and this is what he said, that for the money that he paid into the Nixon administration to buy your case and the problems that you are having, he additionally recommended to Nixon at the time that he would like if his Greek-American compatriot becomes the vice president of the United States for the same five and a half million dollars.

I said, I find that very hard to believe, but that is a lot and if the next time I am in Washington, I will be very glad to discuss this thing further and I did. I came down to Washington soon thereafter. I came down, I called him up and I met him in his office at this National Press Building.

Q Are we going onto another conversation?

A Yes. We are going onto another conversation.

Q All right. Let's go back to the telephone call to you. Did Mr. Kohlmeyer tell you where he had gotten this information?

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A No, he did not.

Q Did he indicate that he had gotten it from the testimony at the hearings?

A No, he did not. He indicated that it came in the form of a leak.

Q From --

A From one of the bureaus, apparently some agency, apparently the special prosecutor or the Ervin Committe at the time. I don't know, but it was a kind of a leak thing that he was trying to check out, as to whether I knew anything about it.

Q You mentioned that he was using the pronoun, we have gotten this information.

Do you know if he was working with anyone else in this investigation?

A I don't know.

Q Did he mention any other reporter's name?

A He did not.

Q Did he tell you when Mr. Skouras had been in contact with Mr. Nixon?

A He did not.

Q Did he mention any dates --

A Well, there is a determining factor in that, because Mr. Skouras died soon after Nixon came

11 into the presidency. How soon after, I don't know. So it had to have occurred, because we are talking about not the son of Skouras, we are talking about the elder, his father, so I don't know when he died.

It was probably between '68 and '70 or '71, whenever it was that he died. The impression was, however, as I remember the conversation, that it took place actually before Nixon was elected. It was during the summer of '68.

Q How did you get that impression?

A That was the impression I think he gave me and I cannot tell you how from this distance, I got that impression, but I did.

Q Did he mention the summer of '68 during this conversation?

A He mentioned even before the election so it had to be the summer of '68, prior to the election in November of '68.

Q What do you recall him specifically saying? Did he mention before the election; is that what you are basing your conclusion on, that it was in the summer of '68?

A I cannot be more specific for you, as much as I would like to be, Mr. Lewis.

12 Q .But your statement, in the summer of '68 is your conclusion, it is not Mr. Kohlmeyer's word?

A I don't remember whether it was his word or my conclusion.

Q Do you specifically remember him saying that it was the summer of '68?

A I don't.

Q Do you remember him specifically saying --

A The date, the summer of '68 lingers in my mind. Now, how I would come to it, I don't know except by it being implanted there in some way.

I felt the whole conversation at the time was bizarre anyway and it was highly improbable, it still does.

Q Did Mr. Kohlmeyer mention whether Mr. Skouras had talked directly with Richard Nixon?

A What is that?

Q Did Mr. Kohlmeyer give you the circumstances of this alleged conversation between Mr. Skouras and Mr. Nixon?

A No. The way it was presented was that on the information that he had, that this was, that it came from whoever gave it to him, that there was this connection and that it was felt that it was pretty well known in

13 Maritime circles, that all this had taken place. That it was just a kind of open secret type of story within certain Maritime circles. The name of another lawyer was, I think he mentioned and that was the name of a lawyer by the name of Arthur Becker of the firm of Nixon & Mudge at that time.

Q In what context was he mentioned?

A I don't remember. Perhaps he was the go-between between the Nixon forces and Skouras.

Q In what context was Mr. Gibson's name mentioned?

A In the context of the ownership of Maritime by this Baltimore clique in the Nixon Administratic that as they say in politics, Skouras had dibs on Maritime.

Q Did Mr. Kohlmeyer mention whether this five, he had any information as to whether this five point five million was paid or how it was paid?

A No, no. Off the record.

(Discussion off the record.)

A I said, we are now on the record, I would like to digress for a moment. Subpoenas will be issued for the younger Mr. Skouras and Messrs. Heine & Barker next week, with request that they bring with them anything pertinent to this conversation that we are having

14 right now about the Skouras affair or the Kohlmeyer affair, whatever you want to call it.

Q Was Mr. Heine mentioned at any time during your telephone conversation with Mr. Kohlmeyer?

A The only reason -- the answer is no.

Q Was Mr. Barker mentioned at any time during that conversation?

A No.

Q Was the company, Prudential Grace Lines mentioned during the telephone conversation?

A Yes.

Q In what context?

A The context that Skouras was a close friend, intimate friend of Nixon and the spokesman for the AGAFBO Group, who was making its deal with Nixon to give Safir a hard time.

Q Were the names of any other companies mentioned during that telephone conversation?

A Not specifically.

Q What do you mean not specifically, were they --

A Well, the defendant Lines or the respondent Lines that were the subject matter of my earlier conversation with Mr. Kohlmeyer represented the eight defendants here and so, it was more or less a basis for the conversation when he was saying that Skouras was the head spokesman as far as the Nixon crowd was concerned.

That Skouras was the leader and he was taking the ball, as we say, in approaching Nixon with this deal. So that when I spoke to Kohlmeyer, there was no discussion of Farrell Lines or Lykes or anybody else. It was just in conjunction with Skouras representing the Lines.

Q What information did Mr. Kohlmeyer give you as to the purpose of this alleged arrangement?

A Most of his questions to me were just that, they were questions. He was trying to, as a newspaper man would, check out a story and he was asking me questions based on the hypothesis that he was describing, as to what had occurred a few days prior to his call to me.

So it wasn't a question of what he was trying to do, he was giving me information in a way, but he was trying to check out information that he had received from others. That is all I can tell you about that.

Q What did he ask you about the purpose?

A What did he ask me about the purpose of what?

Q What was your understanding of the purpose of this five point five million dollars?

A The purpose was to accomplish the settlement of the anti-trust case that then existed.

Q Was the government involved in the anti-trust case?

A The government was involved in the anti-trust case, yes.

Q In what way?

A Well, the government was a major creditor of the Line and the feeling was that there was an offer that the original deal with Nixon was seven million dollars and that the government was accepting a million six, as a settlement of its claim in the anti-trust case which represented a deduction from the amount that would be paid to the Nixon campaign, leaving the five point four million out of the seven million available for the campaign. That was my understanding of what he was saying at the time.

Q You got this information from questions that Mr. Kohlmeyer was asking you?

(Continued on next page.)

A From the way he was asking me the questions, that he was not sure whether it was a $7,000,000 deal or a five million four deal, but there was a lot of money involved, and for that Mr. Skouras, as he said, was enabled to name the vice-president.

Q Have you discussed your telephone conversation with anyone, or this conversation we have been talking about, this telephone conversation?

A Yes, with several people.

Q Other than lawyers?

A Other than lawyers.

Q Who have you discussed this conversation with?

A With my brother, William Safir.

Q What did you tell him about the conversation?

A Exactly what I told you.

Q In detail?

A In detail.

Q Do you remember when you told him about this conversation?

A As a matter of fact, I even discussed with him in connection with the possibility that the wiretap -- he was -- he was one of the fourteen people in the government in Washington, when he was assistant to the President, and I discussed it with him on the basis that perhaps the wiretap on him, which could not have been for any national security reason that anybody could ever come up with, which took place in 1969, 1970, was based on the fact that he was my brother.

At the time that the first decision was handed down in the Second Circuit, 1969, on this case, apparently a tap was put on his line.— Within a few days after the Second Circuit handed down the decision on that Safir 1, and that might have been the reason for the tap, since nobody has yet ever come up with a reason why the Nixon speechwriter should have been tapped.

Q Do you remember when you had this conversation with your brother?

A I had this conversation with my brother as recently as a year ago.

Q Prior to a year ago you did not discuss this conversation with your brother?

A I am not sure when I first mentioned this to my brother. There is a possibility -- I remember at least a year ago.

Q That you did within the last year discuss it?

A Yes, within the last year.

Q Was there anyone else that you discussed the conversation with?

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A My wife, others.

Q Other than your wife?

A Others. I would say eight or ten others.

Q Others in your business?

A Others -- yes, golf partners; people like that.

Q Can you remember? Could you give us the names of the people?

A Yes. I will give you the names of the people.

Q Anyone in your business? Are you in a business now?

A Yes.

Q What is your business?

A Well, in the business, to answer your first question, I will try to get as -- I mentioned the name Chadwick before, William Chadwick; he knew of this.

Q How did he know?

A Not only of the conversation with Kohlmeyer, but also of the fruits of that conversation, because I discussed it with him more than once.

Q How did he know the conversation?

A As I said earlier, I had -- he was in the office at the time that Kohlmeyer called in '73 and --

Q Was he listening on the line?

A No, he was not.

Q He heard your end of the conversation?

A He did not hear my end of the conversation, because I was at home and he was at the office. He relayed the fact that he was trying to get in touch with me.

After that I did discuss it with him, as to the details of the conversation, names, places, companies and everything else.

Q You mentioned the fruits of the telephone conversation.

A Well, the fruits is just exactly the names, places, and even the connotation of the vice-president and everything else that I considered fruits of the conversation.

Q Other than the information contained in Mr. Kohlmeyer's questions, have you gotten any other information?

A No. There is a broad area that I intend to go into on these subpoenaes next week.

Q Okay. Other than Mr. Chadwick, who else did you discuss the telephone conversation with, other than lawyers?

A Other than lawyers, with a Leonard Zahn.

Q Who is Mr. Zahn?

A He is a close personal friend.

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Q What business is he in?

A It appears -- he is in 120 Broadway, here. He is with Joseph Thal & Company, a brokerage house here at 120 Broadway.

Q Is he a broker?

A Yes, and he is a long-time friend, and we have discussed this many times. I cannot recall at the moment, but there have been others.

Q Mr. Safir, have you given us all the fruits of this telephone conversation at this deposition?

A I think so.

Q I mean, I can give you a few minutes. We would like to know whatever you can remember about that conversation.

A Well, I think you have got it. It was a large earful for one conversation.

Q Do you remember how long it lasted?

A Not more than fifteen minutes, maybe less.

Q Do you remember if any dates were mentioned?

A The dates seem to say that the money was agreed to be paid starting in 1968 or 9, and I am not too sure even of that, but that is it. That was the basis of the deal.

Skouras was going to take it on and pay this magnificent sum out in order to presumably settle the antitrust case, and see to it that the subsidies not be withheld from the lines, from the steamship lines, who were then receiving them and who were apparently guilty of the violation.

Q Have you had any contacts with Mr. Kohlmeyer since your October or September, 1973 telephone conversation?

A Yes. I mentioned the fact that I visited with him a month or two or three thereafter.

Q Do you remember if it was in 1973 or 1974?

A It might have been in early '74. I told him, I told you that he had an office, he was in this little office all by himself in that building.

Q What building is that?

A National Press Building. Apparently he was a pipe smoker, because the room smelled [illegible] ike a gas bin. You could not breathe in it.

I said, look, I am prepared to cooperate and help you on this thing, if you want some help. I am surprised that you hadn't gotten back to me earlier.

He had nothing much to say. He looked like he was unhappy with the whole conversation, and perhaps he shouldn't have called me in the first place.

So at that point I decided that was the end of it, at least for then, and I certainly -- I had nothing further to go on. Everybody and his brother was investigating everybody else at that particular time, and I had my own problems, most of which were based on the ongoing fight with you people.

So I did nothing further about it.

Q Had you initiated this meeting?

A The second meeting, yes, it was me.

Q And do you remember what Mr. Kohlmeyer said?

A He said he would think about going further with it, and that he would get in touch with me, which he never did.

Q Did he ask you any additional questions?

A Not a one.

Q Did he give you any additional information?

A I don't recall.

Q Did he give you any documents?

A No.

Q Do you remember him giving you any more details or mentioning any names?

A I said no. He was reluctant to, from being practically garrulous in the telephone conversation, he was very reluctant to do any talking on that visit.

Q Do you remember how long this second meeting took?

A No more than fifteen minutes.

Q And did you then -- have you talked to Mr. Kohlmeyer at any time since then, or met him?

A I have not.

Q Do you have any information other than the information you got from Mr. Kohlmeyer to substantiate any of the facts that you have discussed here today concerning Mr. Skouras?

A No.

MR. LEWIS: No further questions.

MR. NOLAN: No questions.

MR. TELEGEN: No questions.

MR. SHENEMAN: No questions.

MR. FORT: I have one or two.

BY MR. FORT:

Q Mr. Safir --

A This is Mr. Fort; right?

Q Mr. Fort speaking.

Did you participate in any way in the settlement of the antitrust cases?

A No, except as an unhappy member of the audience when the referee agreed to accept the offer. I had no -- the answer is no.

Q Did you ever discuss any of these matters relating to Mr. Kohlmeyer which you have testified about with any lawyers or witnesses in the antitrust cases?

A I discussed this with -- now that you mention it -- I discussed it with Alfred Rosenberg, the lawyer for the trustee in bankruptcy, when he asked me to go over certain claims about nine months ago.

Q Did you ever mention it to any government lawyer, anyone representing the government as a creditor?

A The answer is no.

Q Did you ever discuss this with your brother, William Safir, when he was in the White House?

A No.

Q Did Mr. Kohlmeyer, as far as you know, ever write any newspaper articles about this so-called deal?

A I have no way of knowing. I did not see any.

MR. FORT: No further questions.

MR. BASSECHES: I have a statement to make for the record, and it is simply a statement of advice, Mr. Safir. And it arises as much out of having ten years association with you and a feeling of fondness and affection arising out of that.

I think it would be prudent, insofar as your pursuit of the issues you have identified today, if you were to avoid undertaking, as I know you have on occasion in the past, undertaking to give somewhat broad publicity to the assertions -- that I believe on occasion your legal papers have been forwarded voluntarily by you to various members of the press.

Unless the assertions are true, some of the assertions you made might be considered defamatory, and I think unless you wish to establish them and subject yourself to whatever might be the implications of that, that it would be advisable not to undertake to give this broad publicity.

THE WITNESS: I appreciate that.

MR. BASSECHES: Through the press or media.

MR. TELEGEN: Just for the record, there are no stipulations?

MR. BASSECHES: I think that should be explain
to Mr. Safir.

- - -

____

Subscribed and sworn to
before me this_______day
of__________________1977

____

CERTIFICATE

STATE OF NEW YORK)
ss:
COUNTY OF NEW YORK)

I, PHILIP C. RIZZUTI, a Notary Public of the State of New York, do hereby certify:

That MARSHALL P. SAFIR, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by such witness.

I further certify that I am not related to any of the parties to this action by blood or marriage; and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 29 day of September 1977.

PHILIP C. RIZZUTI

CO- 207
New 8/74

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001 6185 10/24/75

YOUR RECEIPT
THANK YOU
CLERK, U.S. DIST. COURT
FOR DIST. OF COLUMBIA

District Court for the District of Columbia

FILED OCT 24 1975
JAMES F. DAVEY
CLERK

MARSHALL P. SAFIR
Plaintiff.

vs.

FREDERICK DENT ET AL
Defendant.

CIVIL NO. 74-1474

NOTICE OF APPEAL

Notice is hereby given this 24 day of October, 1975, that

Marshall P. Safir

hereby appeals to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 22 day of October, 1975 in favor of FREDERICK DENT ET AL. against said MARSHALL P. SAFIR

Marshall Safir
Attorney for
Pro Se.

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-------------------------------------x

SAFIR,
Plaintiff,
-against- 77-C-1093
AMERICAN EXPORT LINES,
Defendant.

-------------------------------------x

SAFIR,
Plaintiff,
-against- 68-C-643
BLACKWELL,
Defendant.

-------------------------------------x

United States Courthouse
Brooklyn, New York

October 28, 1977
5:00 o'clock P.M.

Before:

HONORABLE JOHN F. DOOLING, JR., U.S.D.J.

ATT. 2

PERRY AUERBACH
ACTING OFFICIAL COURT REPORTER

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Appearances:

MR. MARSHALL SAFIR, PRO SE

GILBERT FLEISCHER, ESQ.
U.S. Government

ELMER MADDY, ESQ.
Attorney for Trade-Line Defendants

ROBERT T. BASSECHES, ESQ.
Attorney for Non-Trade-Line Defendants, et al.

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MR. SAFIR: If your Honor please, my remarks in connection to my motion to amend are going to be very brief, and the motion to consolidate the same. I do feel, however, that once I do complete these few remarks that I be allowed to wait to answer the motion for summary judgment in the other action, 77-Civ-1093, so that I reserve.

THE COURT: What really, I suppose in a sense is the motion for summary judgment, can be treated as made in both cases, because I understand that the motion to amend would, in effect, introduce into the older case the False Claims Act Allegations, and since the motion for summary judgment is basically directed to the validity of those claims and their timeliness, their questions are common to both cases.

MR. SAFIR: Yes. The difference, however, comes into the fact that one case covers construction differtential subsidy funds as well as operating.

THE COURT: That's about that.

MR. SAFIR: So there is a difference, and in my approach to this, your Honor, if I could be so presumptuous, there is a difference in the cases in regard to the specific intent to defraud. I take the position that you allow me to amend, in 68-C-643, that proof would just be that the claims were false, fictituous or fraudulent.

In the other action, 77-Civil-1093, I take a much more position of specific intent on the part of these people to defraud the United States. Now, the effect may be the same in both cases, that one does not have to go that far as to prove specific intent. You may decide to simplify my problems by determining that in 68-C-643 or in 77-1093, in which case I would find it not necessary to go into certain very serious allegations that I made in the dispostion just the last month, in which I have not had, as yet, the opportunity for investigative or discovery in any depth whatever in connection with it.

If I may say, the Supreme Court just last week came down with a decision which considerably alters my position in regard to 77 Civ. 1093, in regard to the availability to get to the bottom of the Colemire conversation on the telephone.

THE COURT: As I understand the Supreme Court's --

MR. SAFIR: I beg your pardon, sir? This is not my case I'm talking about. I'm talking about the case in the Supreme Court where the Court granted the right in civil actions to subpoena the Nixon tapes, and it is

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those tapes with certain specificity which I would want to bring forward here, to make part of the action, and discovery in 77-C-1093 possible, and I would ask that time for such a subpoena from you on the basis of setting forth in accordance with Rule 56(f) sufficient reason to you to permit such a subpoena.

So at the present time, there is a difference between a reply to their opposition to my motion to amend on one side, and the consolidation issue which I'm not going to address in any depth, and on the other hand, the answer in opposition to the motion for summary judgment in the U.S. Ex Rel Marshall Safir.

To address the motion to amend, in my papers which were submitted yesterday I think I have, as far as any layman can go with his limited legal experience. This is my story. It's all here. The Templeton case, I think is overwhelmingly in favor of amendments such as this at this particular time. The circumstances are the same that were involved. The same. There is no change in anything that had to do with the amount of time of the violation, the amount of monies that were involved, except on the amplification of the recovery through the double damage clause in the False Claims case.

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So that as far as I am concerned, I'm prepared to submit on my papers in regard to the motion to amend, and as far as consolidation is concerned, that, sir, is on the basis of the fact that there are -- that the cases are not alike as far as construction differential subsidy is concerned, and bring in that element, and also the element of specific intent to defraud on the side of 77-C-1093.

I recommend consolidation to the Court for the Court's own convenience. As long as the United States has stated in its affidavit last week that they have no intention of changing the position of declination to appear in 68-C-643, I see that would constitute, based on your granting my motion, the declination to appear on their part in that action, as far as any false claims amendment is concerned. So that I would then be, as they quote, "The private attorney general" in both cases.

I may mention one other factor at the present time before the question is asked, and that is the question of counsel in my behalf. I've had great difficulty, your Honor, in finding counsel who is either properly equipped to pursue such an action as this, or willing to take on the establishment that's involved

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in this thing. I have gone to considerable expense this summer, more than $10,000 of wasted monies with counsel, and have come up empty handed, except where their mistakes taught me lessons for myself which has put me through the school of hard knocks. It's the glaring faults, and certainly the papers that were prepared for me in this case which would have destroyed the basis of my entire actions which have given me enough knowledge to stand before you today with some degree of knowing what I'm talking about. But that doesn't mean that it's my intent to continue to play the Perry Mason part, and as soon as I can do it, and perhaps as quickly as you can decide these motions, if they're in my favor, I'm sure half of the legal community in New York would come running to act in the United States' behalf, and so in that, and pending hearing from the attorneys for the defendants I'll rest, if I may.

(continued next page)

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MR. FLEISCHER: Gilbert Fleischer for the Government.

THE COURT: Yes, Mr. Fleischer.

MR. FLEISCHER: If your Honor please, our interest is rather limited in these motions, and we have been objecting to the old action, 68 Civil 643, and I think the issue before the Court is may this Court entertain an amendment to the injunction proceeding based upon violations of the Merchant Marine Act of 1936, started some nine years ago, so as to now transfor that suit into one of a qui-tams remedy under the False Claims Act. We think not, and I believe our memorandum amply outlines our reasons. Not only does this amendment seek to relitigate under the guise of the False Claims matters which have been settled under the 1936 Act, but it is a completely different theory of recovery under a completely statutory scheme, with completely different species of violation of conduct and methods of recovery in completely different forms; Secretary of Commerce under the '36 Act, and the Court, under the False Claims Act.

It's the Government's position, your Honor,

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that any relief sought under the provisions of the False Claims Act can be adequately litigated in this new action that Mr. Safir has filed for that purpose, and shouldn't be injected into the now completed case of 68 Civil 643.

Moreover, the penalty provision of Section 810 of the Merchant Marine Act of 1936 would appear to give the only relief available to such violations as your Honor at one previous time had so held.

THE COURT: I don't think I'm an expert on it.

MR. FLEISCHER: At least the Court of Appeals took no issue of it.

THE COURT: Well, they fixed it up.

MR. FLEISCHER: And I think with that, and the papers that we've submitted, and the interest of saving time, I'll defer to counsel for the Trade Lines, and non-trade lines who wish to be heard.

THE COURT: From your point of view you'll be out of it altogether if the case is alluded to in the new suit, and that remains, even though that remains.

MR. FLEISCHER: Right, because the Attorney

3 General has declined to take any part of that suit. Thank you, sir.

THE COURT: Mr. Maddy.

MR. MADDY: Your Honor, I'll be speaking on behalf of the trade lines, and addressing myself primarily to our motion for summary judgment of the '77 action. And the basis of our position is that this Court has no jurisdiction over the 1977 suit brought by Mr. Safir under the Title 31, United States Code, Section 232 (C), because all of the essential information and the facts were already in the possession of the United States Government, in fact, since 1965, and so therefore, summary judgment is the appropriate remedy here.

In our memorandum we've summarized the deposition which we took of Mr. Safir, and in that deposition --

THE COURT: That hasn't been filed; has it?

MR. MADDY: Yes, your Honor, it has.

THE COURT: Oh, there it is, yes.

MR. MADDY: And in the deposition, Mr. Safir could not come up with any new item of information which -- new item of essential information, which he could supply to the Government. He did make

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some reference to a conversation that he'd had with a newspaper reporter back in 1973, a Mr. Colemire, I believe, who had talked to him about some conversations, some information Mr. Colemire said that he got through leaks from the Office of the Special Prosecutor relating to the Watergate matter or the Ervin Committee. But, Mr. Safir himself placed no credence in those matters, and your Honor there's nothing to it.

In addition, that information, in fact according to the testimony of Mr. Safir, came from the Government, in any event would be information which the Government had in its possession.

Now, in view of that fact, because Mr. Safir has no new information, had no new information which was essential to his case to supply the Government at the time he brought his suit, we contend that under the decision of the Court of Appeals in the suit of United States, in relation of Greenberg versus Burma Oil, which was decided this year, this case should be dismissed. There, the Court of Appeals construed Section 232 (c) as absolutely barring a qui-tams action brought on the basis of information essentially already in the possession of the United States Government.

Mr. Safir argues here that only the Government can answer the question of whether it has all essential information in its possession, but I think in that respect, Mr. Safir really misconceives the requirement that's placed upon him by the statute, because it's necessary for him to tell the Government what information he has: and this, according to the deposition, he has no new information which he can tell the Government about. So I don't think he makes a point there.

Further, at Page 6 of his memorandum, he argues that certainly the United States did not have all the facts in its possession to make such a determination until this Plaintiff supplied the additional documentation and the additional sworn testimony in S 243.

As your Honor may recall, that's the maritime hearing which was held, and which was certainly completed by 1973. So I think Mr. Safir, by his own memorandum, is conceding he had nothing new --

THE COURT: By 1973.

MR. MADDY: By 1973 which was certainly, you know, four years prior to the time he began this

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5 suit. So this certainly wouldn't save Mr. Safir either.

In addition, as defined in the Non-Trade Lines' memorandum, all the essential information regarding this matter was already in the hands of the Government, because Mr. Safir testified before the so-called Douglas Committee for the Joint Economic Committee, which was then chaired by Senator Douglas, and before the Federal Maritime Commission in Docket 6513 at great length, and at that time all the essential information regarding these matters was supplied to the Government.

R3 Now, Mr. Safir is relying upon the case of United States, on the relationship of Davis versus Long Drugs, Incorporated, to get around his need to have this new essential information as of the time he filed his action. But that case only held that there, certain information in the hands of the California State Government, was not the same thing as information in the hands of the Federal Government; and here we have a case where all this information is already in the hands of the Federal Government.

Mr. Safir also argues that his delay in filing this 1977 qui-tams action should be excused, because

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the administrative process took so long. Well, your Honor, I just don't -- that is certainly no excuse, and there is certainly no disability at any time by Mr. Safir bringing his action.

THE COURT: There's no disagreement with you. I gather it took quite a while.

MR. MADDY: Well, your Honor, it did take some time, but it certainly didn't prevent Mr. Safir on filing a suit if he had some new information. He could have done that at any time.

Mr. Safir also gives another excuse for his delayed filing of his 1977 action, because he said he was mislead by counsel for the carriers, and he attaches to his papers a transcript of some argument before your Honor back in 1972, and at that time speaking for the carriers was Mr. Richard Saltzman, and I think if you will read the attached testimony you will see what Mr. Saltzman said is that as of that time there was no qui-tams action or false claim action for this court, which was true. Mr. Safir had not pleaded any, and apparently Mr. Safir has said he was being mislead by that. Mr. Saltzman was merely stating a fact.

I think it's a little unusual for Mr. Safir

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to say that he's looking to the counsel on the opposing side to advise him. I just don't think that's so. But in any event, what Mr. Saltzman said was correct.

I think also, if you'll see attached to Mr. Safir's affidavit is also your Honor's decision on that occasion, and right at the end, I think you agreed with what Mr. Saltzman said about the fact that there was no qui-tams action in the proceeding as of that time. Thus, your Honor, I think there is just no basis for the Court having jurisdiction here, and that we move that the Court dismiss, grant the motion for summary judgment.

The balance of the argument is going to be presented by Mr. Basseches unless your Honor has some questions.

THE COURT: No, I have no questions.

MR. BASSECHES: Robert T. Basseches, B-A-S-S-E-C-H-E-S. I'll be speaking on behalf of the non-trade lines, American President Lines, Prudential Lines, Grace and Farrell.

Your Honor, these lines throughout this proceeding has been known as the non-trade lines for a fundamentally good reason. They never

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competed with Safir Steamship Lines. They never participated in the illegal rate activity which has underlaid this long series of litigations. This has been the Line's claim from the outset of this litigation, and that claim has now been established through the decisions of the Maritime Administration.

Our papers and those of the other defendants have identified several what we consider to be absolute barriers to the maintenance of this new suit, and to the Court's entertainment of the suit, and by "suit" I mean I've taken a somewhat simplistic view of the recent filings of Mr. Safir, and though possibly not procedurally correct, considered both his '77 action and the proposal to amend the '68 action, as stating a claim under the False Claims Act, and I fundamentally am going to -- as we did in our papers -- address both, since we intend to go to the heart of the issue, what I consider to be the heart of the issue.

As I've indicated, we and our colleagues have in the papers addressed what we consider to be a number of independent reasons why these actions should be dismissed; summary judgment granted;

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or alternatively, in the '68 action, be amended, not permitted.

One of those has been that which has just recently addressed by Mr. Maddy, which represents the issue of the availability to the Government at the time of the suit, filing of suit, both '77 actions, and if one were to consider it, the '68 action. All relevant information to form the foundation for the finding of violation. Mr. Maddy has addressed that.

In addition, I will touch briefly on it at the conclusion of my argument, and independent barrier which exists, and that is the statute of limitations.

Mr. Fleischer has finally addressed the question of the appropriateness at this time, almost a decade after the action was initially filed, of entertaining an amendment to the 1968 complaint to include what we consider to be a wholly new claim under the False Claims Act. In the view of the non-trade lines, there's an equally fundamental reason for rejecting both the entertainment of the new action and the amendment. We believe that there's no possible basis for dispute on the facts. The

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facts, the history of this litigation I know is completely well-know, they're spread on the record, indeed they're spread on quite a number of records. We believe on those facts, certainly for the non-trade lines, but also for all the defendants, that there is no possible basis for a holding that there is a violation of the False Claims Act.

As I say, I think your Honor pointed out that there seemed to be on the merits a close intertwining of the amended complaint and the -- proposed amended complaint, and the complaint in the '77 action, and I'm addressing on the merits even though it possibly is an unsophisticated way of approaching the issue on both. I believe there are essentially three avenues to the conclusion I've suggested, that there is no foundation for a False Act claim.

(Continued on next page.)

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From the outset, as I've noted, it has been the position of the Non-Trade Lines that we be wholly free of any misconduct incident to the rate activities which have formed the basis of this litigation. That position of the Non-Trade Lines has, for all practical purposes, been accepted by every forum in which it has been addressed. The Maritime Administration Chief Administrative Law Judge who heard the case in Docket S243 found and concluded that the Non-Trade Lines did not participate in the rate activity; found it and concluded it did not violate Section 810, and found and concluded that they were entitled to the full subsidy payments which had accrued for them during the period 1965, 1966, which is, of course, the relevant period here. On exception is the Maritime Subsidy Board, and thereafter the Secretary of Commerce accepted the Administrative Law Judge's conclusions that the Non-Trade Lines had not participated in the illegal rate activity, and accepted his conclusion that those lines should be recipients of the full subsidies that they had accrued.

This February the United States Court of Appeals for the District of Columbia, in acting on Mr. Safir's action brought in the District to put under review the Maritime Subsidy Board's decision, the D.C. Circuit

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2 opinions characterized the Administrative actions to which I have reference and I quote "As exonerating" that's the words they used "exonerating the Non-Trade Lines.

If as it has been established by each Administrative agency that has considered the matter, the Non-Trade Lines are wholly entitled to their full subsidy, to be somewhat rhetorical about it, how can they conceivably be blamed that they have violated the False Claims Act when they filed their vouchers, claiming the subsidy in the period they're entitled to. That's Avenue Number One.

Alternatively analyzed, the False Claims Act has in its heart the conduct which represents the filing of the fraudulent claim, the cases interpreting the statute established beyond doubt that the only conduct which is actionable under the provision is the filing of fraudulent claims with the knowledge that they are fraudulent. It requires a fraud, and it requires that it be knowing. We address those, a number of cases in our memorandum. They established that, I think, irrefutably, and I don't propose for the Court to put to the burden of quotations here.

As we had noted, it has been the position of the

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3 Non-Trade Lines from the outset of this long litigation that they were free of any misconduct; that their position in this regard is reasonable and justifiable, has been confirmed by the Administrative determinations which had essentially upheld their position in this regard. It thus cannot on the clearly established record which is it spread out, and the decisions, it cannot be shown that the Non-Trade Lines made a fraudulent claim for subsidy, knowing that they were not entitled to subsidy. Rather, their claims were accompanied by an honest conviction that the subsidy was due, a conviction which it has been shown is wholly reasonable, wholly reasonable because it has been determined by every Administrative agency or every element of the administrative process that they are entitled to the subsidy. It has affirmed their convictions, essentially.

Finally, the third pair is one which again makes recourse to what the purpose on construction of the False Claims Act is. Again, cases we have addressed in our memorandum put beyond dispute the fact that the only claims which are actionable under the False Claims Act or the only actions are those which involve both an action on the part of the claimant involved in a failure

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of disclosure, or a fraudulent statement to the Government, and concurrently, the fact that the Government is misled as to the facts. We discussed that at great length at page 12 of our memorandum.

I don't believe that there can be any dispute that all relevant facts relating to the rate reductions the conduct which is at the heart of Section 810, have been known to the United States, even from before the time those rate reductions were put into effect.

As Mr. Maddy noted, in April of 1965 Mr. Safir appeared before the Joint Economic Committee of the United States Congress and identified to the Congress the rate reductions that AGAFBO, standing for Atlantic Gulf American Flag Berth Operators, had put into effect

The full facts were spread on the record over 7,000 pages in Docket 6513, ending in a decision in 1967 by the Federal Magistrate. The facts were again spread on the record in Maritime Subsidy Board Docket S243, ending in decision somewhere in 1973.

Indeed, the very payments of subsidy in 1971, to which Mr. Safir principally directs his argument, were the subject of litigation in this Court in 1971 when Mr. Safir sought to enjoin those payments. The Government, in Maritime Administration, was fully

5 cognizant at every step of the way of the actions which formed the basis of the Section 810 violation. There can't be any claim at this point, or there can be a claim, but there can't be any substantiation of that claim, your Honor, that the United States was not fully aware of all relevant facts at the time it paid any voucher or again, that it was deceived. That lack of awareness, and that deception, however, are the fundamental elements, the necessary, essential elements of a False Claim action.

For these reasons, we suggest that quite apart from the jurisdictional barriers of limitations, quite apart from the jurisdictional barrier that possession of information by the Government at the time the action was filed, there is at the heart of the claim here, which underlies the two actions, simply no foundation which can be maintained.

The historical facts are spread on the record, and the substantiate the fact that the necessary elements of the False Claims, fraud, deceit, knowing misrepresentation, simply do not exist. For those reasons we suggest that, and we have moved in the 77 action for summary judgment, and we suggest those reasons, similarly in addition to those addressed by Mr. Fleischer,

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justify this Court in refusing to entertain the amendment, because even if the '68 action were amended, in the words of the Supreme Court "the claim would be futile."

I would like to very briefly, in addition to the principal matter I've addressed, touch on the issue of limitations. As we have suggested in our memorandum, all Courts that we have seen but one, that one being the Third Circuit in its District Court which is responding there to have taken the position that the Statute of Limitations on a False Claim Act proceeding runs from the time the claim is filed.

THE COURT: Is it subject to Homeberg against Ambrek exception?

MR. BASSECHES: I have trouble with the suggestion of the Homeberg exception, which as I understand it means "fraudulent concealment holds the statute." I believe, and I'm not prepared now, because the stack of cases is too big, we can very quickly do it. I believe for purposes of the False Claims Act, fraudulent concealment does not toll that statute. Of necessity, it's like a criminal act, to make the analogy, if you have a Statute of Limitations for crime, typically the criminal act is not disclosed. However, the

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statute runs nevertheless, and concealment of the crime or commission of the crime does not cull the statute in a criminal act. I believe there's conclusive determination that fraudulent concealment, if you would, of fraud, does not toll the Statute of Limitations under the False Claims Act. I cannot, with an apology, give you that case now. I can certainly supply it later.

THE COURT: I was thinking particularly in connection with this case, in view of what has been said in the absence of concealment, but I was wondering how the Third Circuit -- because I have not had a chance to read it -- led around what seems to be the plain enough language in 235, and I wondered whether they had used Homeberg against Ambrek.

MR. BASSECHES: The theory of their decision, your Honor, was that the fraud did not come into fruition. Because of action, ergo, did not accrue until the Government, in fact, tendered the funds.

THE COURT: That's the theory of Mr. Safir.

MR. BASSECHES: Mr. Safir addresses neither of those two theories. I should just add --

THE COURT: I think he contends it is made within six years; is that right, Mr. Safir?

MR. SAFIR: Yes.

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MR. BASSECHES: If I may, I cannot speak on behalf of the other carriers, but in the case of the Non-Trade Lines, and we have put in affidavits to that effect, the final accountings and final vouchers which effectively are the concluding actions of the lines to collect subsidy weresubmitted at the latest in January of 1971.

THE COURT: Those are the ones that you have a copy of labeled "Final Claim"?

MR. BASSECHES: That's correct. "Final Claims."

They were approved by the Maritime Administration and stamped "Paid" and sent to the Treasury at the latest, again, in March of 1971.

As to all carriers but Farrell, they were paid, very early paid, by that I mean the carriers received the check in very early June. Farrell Lines, apparently their accountants act with greater alacrity than those of the other carriers, they disposed of all pending matters and received their checks in 1970. I forget the precise date, but it's available.

But, in any event, not only the filing of their final vouchers but their final payment occurred more than six years prior to the '77 action. In the case of the other lines, all the vouchers, final accountings,

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and Marat approval occurred more than six years ago, but the check was received from the Treasury within the six years period.

THE COURT: You mean the Trade Lines?

MR. BASSECHES: I'm speaking of American President Line. Of the four Non-Trade Lines, Farrell, both filings of vouchers andthe receipt of payments was beyond the six years period.

THE COURT: Well, not if there was one in June, because action was started late in May.

MR. BASSECHES: Yes, but in the case of Farrell, I can give the precise dates, but they were all in 1970.

THE COURT: Yes.

MR. BASSECHES: Not '70 and '71. So insofar as Farrell is concerned, both filing of claims and receipt of payments was beyond the six year period. In the case of the other three Non-Trade Lines, the only lines for whom I'm speaking in this matter, all filings and claims, final vouchers and Marat's approval was beyond the six year period, but the check was received within the six year period, and what I'm suggesting to you is -- and I do want to address Mr. Safir's memorandum in this regard withthe exception of the Third Circuit, all

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decisions have stated that the date of the filing of the claim, not the date of the payment, is dispositive, but the point at which the cause of action accrued, accordingly the statute begins to run. In the case of the Third Circuit, they say the date of payment governs, but the theory upon which they have taken that position is that there is no cause of actionaccruing under the False Claims Act until the proceeds are disbursed. That is inconsistent with every other -- many positions, Courts who have addressed, to say it is the filing of the claim not the disbursal of funds, which brings into effect the False Claims Act violation.

Now, Mr. Safir has taken still a different position. He has cited the Silver case, and suggests that that case says that the negotiation of the Treasury check is the point in time at which the cause of action accrues, and the statute begins to run. The Silver case, to which Mr. Safir has referenced, didn't address the Statute of Limitations at all. The question there was whether a False Claim Act violation arose where a Government check was forged and negotiated.

The Act -- the fraud occurred when Mr. Silver signed a check which was not made out to his -- Government check which was not made out to his account --

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THE COURT: That's not on the list; was it?

MR. BASSECHES: Yes. It was determined under this statute that the forgery of a Government check in that case represented a false claim, and basically the claim and payment --

THE COURT: That's the only thing that was false.

MR. BASSECHES: Right. Exactly right, your Honor. That it did not involve a question of Statute of Limitations, and as I have suggested, the fraud occurred when the check was signed and negotiated. That was the only fraud. The actions were simultaneous.

THE COURT: Wasn't he bound to say then well, would you rather be sued for collecting the check or filing the claim?

MR. BASSECHES: What I'm suggesting to your Honor is that --

THE COURT: The checks are not.

MR. BASSECHES: The negotiation of a check, except in the unique circumstance where you commit the fraud by forging it.

THE COURT: I'm trying to recall what's on the back of our paychecks and so forth and so on is something of warranty we make every time we cash a check of the Government.

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MR. BASSECHES: Your Honor, unfortunately I'm not in a position to advise you of that. But I would suspect that there is some form of warranty; in the Silver case, an erroneous one, where a man picks up a check made to X-Corporation.

THE COURT: That's right under the Uniform Commercial Code; that one.

(continued next page)

MR. BASSECHES: In point of fact, Mr. Safir's theory was correct. It struggled with the statute of limitation issue. To have struggled, you would have a simple determination, the Government can always determine when the check issues are.

As I've suggested, the Silver case addresses a wholly different matter and not in the context of limitations.

THE COURT: I understand your point.

MR. BASSECHES: I would like to make one concluding comment which really is a function of the shudder that went through my spine when Mr. Safir suggested that -- and I didn't fully understand it -- somehow, some way, he plans to introduce into one or another of the actions still a different idea, and this resulting from what he suggested may or may not be relevant depending upon the Court's actions on the motions.

I think the whole -- part of the theory of Mr. Fleischer's argument for the failure to -- in resisting amendment to the '68 action was that matter has been at issue for a long time, and we should not have seratim litigation. I must say that we shouldn't have seriatim litigation of any

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actions.

Mr. Safir,in his deposition which has been filed with the Court, suggested a new theory, if you will, involving some -- to use his own words -- "bizarre suggestion" that certain representatives of the steamship lines paid the Nixon Committee $7 million dollars in order to make trouble for Mr. Safir. If you read that testimony, or indeed if you read the summary in the Trade Lines memorandum, it will be evident that Mr. Safir, himself, said he did not believe it at the time, and implies that he still doesn't; that the only source that he has was inquiry to him from Mr. Colemire. Mr. Colemire asked him whether he was aware of this, did not say that the facts existed, and which Mr. Colemire promptly abandoned and never pursued.

As we note in our papers there is some necessity if you are going to litigate, that there be a foundation, a showing of reasonable foundation. I think it's in Rule 11, which requires pleadings be signed. I suggest if you read that deposition you will find that there is no conceivable, reasonable foundation for pursuing such claims, and I

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would hope that if, as I hope in the case you rule in our favor, that that would be dispositive of that element of the case as wll. Thank you, your Honor.

MR. SAFIR: Your Honor, in Paragraph 11 of the Trade Defendant's statement of material facts as to which there could be no issue --

THE COURT: Trade Defendants?

MR. SAFIR: Trade, and I'll say non-trade as well -- (Pause.) All the trade defendants.

THE COURT: I have a separate stating.

MR. SAFIR: Let's take the trade first.

In Paragraph 11 of the Trade Defendant's statement of material facts, as to which there could be no issue, there is a misstatement of facts, of paramount significance. This affiant never admitted that the subject matter of the Colemire conversations is improbable in its judgment. What the transcript states, Page 40, Line 13 is as follows: "I felt the whole conversation --

THE COURT: Let me turn to it.

(Pause.) All right.

MR. SAFIR: "I felt the whole conversation at the time was bizarre anyway, and it was highly improbable. It still does."

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A re-hearing of the tape made during the deposition further clarifies the sentence, wherein I clearly stated that it "sounded highly improbable." Not that it was highly improbable.

I have a copy of the tape with me, your Honor, and as it happens it fits this little machine here, so that I could leave it with the Court rather than try to figure out the exact point in the tape where this comes forward. But on oath, the word 'sounded" is in there. In other words, the purpose of bringing this to the Court's attention is to inform the Court that I believe that the Colemire information was factual. I believe that the Defendants entered into an agreement with Richard Nixon and certain officials of his campaign in 1968 prior to the election; that in the event of an election Nixon would, for the gross contribution of 7 million dollars, protect and defend the interests of the subsidized line defendants, the first by protecting the lines from jeopardy of a 250 million dollar subsidy recovery; and second, by ordering the Justice Department to agree to a settlement of the case of Safir Steamship Lines versus ACAFBO, for the Government creditors' obligations alone, and that was the sum of approximately 1 million

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600 thousand dollars. Whether the remainder of the 7 million dollars would go to the campaign coffers of the 1972 election or be siphoned off for other purposes is not yet known. That the Court of Appeals decision, and this I believe, too, in Safir-1, the 1969 decision, seriously compromised the original plan that these people had; and

Safir-2, which was the one where the collateral estoppel effect was decided by the Court, further impaired that scheme's viability. That when the procurium decision in Safir-- we'll call Safir-2a took place, this opened the door to investigation of quote, and this was the quote in the decision, "that the Government had a right to determination in S-243 whether a wider conspiracy existed."

. But this was used by the Nixon Administration through Secratary Stans in the Department of Commerce for a multi-year delay in the investigation to protect these lines from the finding of violation, and to protect the ability of the lines to accrue the 5.6 million dollar obligations that they took on with Nixon by their continued collection of Government subsidy payments;

That when the antitrust -- Safir Antitrust Case as a result of the Second Circuit's decision in Safir's 2 and 2a, the creditors of the bankrupt opposed the million six settlement offer which would have denied any recovery to them. The Department of Justice reduced, and this was -- this is in the record -- to $795 thousand dollars, the amount that would be acceptable to the creditor, United States, if the creditors, the Trade creditors would settle for a new offer which would give all creditors and the trustees and -- as counsel -- the sume of two million four. The referee accepted this proposal, the second proposal, and it was approved by the District Court of the District of Columbia in the antitrust case.

The Department of Justice since Nixon's resignation disowned the Nixon Administration agreement to reduce its claim. The 2.4 million settlement leaves open the question of the collection and disposal of the remaining 4.6 million dollar payoff, since the 2.4 million dollars is undoubtedly traceable, to appropriate entries on the books of these defendants. It is in the area of this remaining fund that investigation and discovery will be helpful in '77 C 1093.

(Continued on next page.)

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MR. SAFIR (continuing) Now that the recent Supreme Court decision on the Nixon tapes for civil actions becomes -- I'll put it this way -- the recent decision makes the ability to get --

THE COURT: Makes them available.

MR. SAFIR: Makes them available. This is a significant development. Plaintiffs contend in passing that Nixon lived down his obligation to these defendants as long as he was in office. It was not until after Nixon resigned in August 1974 that on September 5, 1974, just a month later, the Secretary of Commerce, then Dent by name, was free to file his order confirming the violation itself. Even then, the order was tainted by the unsupported charge that Federal officials of the Department of Defense induced the illegal action to attempt to apply the doctrine of collateral estoppel -- excuse me, not the doctrine of collateral estoppel -- the doctrine of estoppel to the Government's recovery under Section 810, or alternatively under the False Claims Act, and handicapped the Department of Justice under a new administration from providing, under the False Claims Act, the ability to pursue Falst Claims action, because the Government's hands were not clean.

upto

upto

By the way, this last approach that took place

2 in the order of the Secretary in 1974, that of blaming the Department of Defense officials in 1965, was rejected by Judge Wright in his decision last February. Therefore, either on a denial of the defendant's motion for summary judgment or on a grant of a continuance to this plaintiff to complete his basic discovery prior to taking on, on your part, the decision on the motion for summary judgment, I'll require several subpoenas:

A subpoena to the General Service Administration for those Nixon tapes during the period, May 15th to June 15th, 1969; the time at or about the first Safir decision in the Court of Appeals, wherein, to be specific, the name S-A-P-P-H-I-R-E or Sapphire, my name, or William Sapphire, my brother's name or Skouras, S-K-O-U-R-A-S or Spiros Skouras or Spiros or the word "Fair Star" or Gem Stone would appear.

Check the tape

THE COURT: Those were the vessels?

MR. SAFIR: There was a vessel called the S.S. FAIR STAR that was not one of my vessels, but it was a vessel which may have a bearing on this case.

The name Arthur Becker might also be added to the subpoena. The Nixon tape list, if such a name appears in connection with a Maritime conversation.

Second, I would need any record of White House

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calls to the home of Marshall Sapphire by John Erlichmann, collect or paid, for the months of June and July of 1970 and 1971; and those Nixon tapes immediately preceding and following such calls.

Four, I would need a subpoena duces tecum for one Arthur Becker, Esquire, of Washington D.C., with his diary for the dates June 1st, 2nd and 3rd, 1969, and all records in his possession of a transaction concerning the refurbishing of the troop ship S.S. FAIR STAR in September and October 1968.

Number five, a subpoena for the guest record for the Regency Hotel of New York for the dates of June 1st, 2nd and 3rd, 1969; and paragraph six, a subpoena duces tecum for Spiros Skouras, president of Prudential Lines, with his diaries of August through October 1968. The records of Prudential Lines are either travel arrangements for Mr. Skouras or his late father during that period, and diary and appointment records of his late father for that period, if such were available, if such are in existence, rather.

I would also need the cash disbursements and accounts payable records of Prudential Lines for the years 1968, '69, '70, '71and '72, and also those for the Prudential Grace Lines (pause) for a start. The

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records for the other lines would follow.

Now, the reason I asked for such an in depth and for such a serious thing, your Honor, is that most normal people, most Americans would consider it bizarre. They would have considered it bizarre until 1973 in Watergate for any person, lawyer or layman, to get up and make such statements and say he believes them about the President of the United States. And so, it was bizarre when I heard this conversation of Colemire to me. But it's no longer bizarre, and it's no longer improbable.

get the tape

When you look at the history of this, the clients at this table -- the clients of these people at this table, and the recent history as to the bribes, payoffs, indictments of Federal officials that have been involved in the last few months, the general smelly aura of this whole industry, there has to be a time when somebody who has a stake, as I have, and not just an ordinary citizen's desire to do good, but a monetary stake, takes the position and goes all the way, and am prepared to go all the way on this case.

A dismissal of 77-C-1093 at this stage, and prior to discovery would be a miscarriage of justice.

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MR. SAFIR: (continuing) What little law I know, and I pick up occasionally from my son who went to Yale Law School, he's in Washington, and I still get the Yale Law School books at my home where he used to get them, so I avidly read as I go along, and in March '74 there was an article on Federal Summary Judgment Doctrine, "a critical analysis" by one Martin B. Lewy, and on page 767, and in answer to Mr. Basseches', there is an article about excusing an insufficient response, and it has to do with sometimes the opposing party cannot make a sufficient response because the affidavits and other supporting materials available to him do not represent a realistic preview of the evidence you will be able to present at trial. I don't have to read any more to you. You probably wrote it.

Anyway, my feelings about it are, that I must be given the opportunity to pursue this to its conclusion. The tools are available now. The Supreme Court has put them in our hands. I ask that the motion to dismiss or for summary judgment be denied, and that the subpoenas issued that I've requested. Thank you.

MR. MADDY: Mr. Safir seems to be suggesting or is suggesting that he be given the chance to do further discovery before your Honor rules on the motion for

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2 summary judgment, or he be given this opportunity, but I don't think that's appropriate under -- when he files his qui-tam's action.

The basis of the claim is that there was a false claim filed, and all of these other suspicions that Mr. Safir may have for various reasons is unsupported. He didn't have any information when we took his deposition. I don't think he should be given leave to go out and just take all these depositions. There's no -- there doesn't seem to be any possible relevance of those matters to the question of whether or not a false claim was filed with respect to these particular subsidy vouchers. They may have interest for other reasons, but they have no bearing on the question on filing a false claim.

Also, with respect to the way the deposition reads, I think we fairly quoted or referred to what the deposition said, and Mr. Safir signed it and swore to it. So we rest upon what's in that deposition, and not what Mr. Safir may say now when he seems to, in effect, seems to be changing his testimony given on that day.

THE COURT: No, he said he had it on the tape.

MR. MADDY: Yes, your Honor. I must say we were basing it upon his sworn -- signed and sworn to deposition.

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3 MR. SAFIR: I have the tape, your Honor, if I may interject, and to put it in the custody of the Court, where on side number 2, halfway through, the word "sounded" is the word, the word that was in the sentence. Can I leave this with Mr. Bachman?

THE COURT: Yes.

MR. SAFIR: Thank you.

THE COURT: Well, I will reserve decision on it. I don't think that I could at this time authorize the taking of depositions on the scale indicated before dealing with the papers that are now before me, because in a way, that taking would be more formidable than the case itself.

If in attempting to decide this I find that it cannot fairly be decided one way or the other without such further discovery, then I will act at that time.

MR. MADDY: Your Honor, we received Mr. Safir's papers yesterday. Could we have a short period of time to file a response thereto?

THE COURT: You received some of his papers yesterday?

MR. MADDY: Well, we got his latest version.

THE COURT: All right, yes, I see it is October 27th. Very well.

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MR. MADDY: By next Friday then?

THE COURT: Yes.

MR. MADDY: Thank you.

MR. BASSECHES: Excuse me, your Honor, I mentioned a case which my colleague, Mr. Lewis, cautioned me to -- I don't know whether it's relevant or not, but let me put it in the record. The case is United States v Borin, B-O-R-I-N.

THE COURT: That's in the briefs.

MR. BASSECHES: Right. That is cited in the briefs. That does address the issue of fraudulent concealment with respect to the Statute of Limitations.

THE COURT: Thank you, gentlemen.

(Whereupon Court stood in recess for the day.)

* * *

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- X

MARSHALL P. SAFIR and SAPPHIRE STEAMSHIP LINES, INC., Plaintiffs,	
-against-	68 C 643
ANDREW GIBSON, Acting Maritime Administrator, Maritime Administration, United States Department of Commerce, JAMES S. DAWSON, JR., Secretary, Maritime Subsidy Board, Maritime Administration, United States Department of Commerce, and MAURICE STANS, Secretary of Commerce of the United States, AMERICAN PRESIDENT LINES, LTD., PRUDENTIAL LINES, INC. and GRACE LINE, INC. (Now operating as "Prudential-Grace Lines, Inc.") and FARRELL LINES, INC., AMERICAN EXPORT ISBRANDTSEN LINES, INC., BLOOMFIELD STEAMSHIP CO., LYKES BROS. STEAMSHIP COMPANY, INC., MOORE McCORMACK LINES, INC., and UNITED STATES LINES, INC., Defendants.	MEMORANDUM incorporating FINDINGS OF FACT and ORDER

- X

DOOLING, D. J.

Plaintiffs move for an injunction *pendente lite*, against the Maritime Administration's disbursing to the defendant AGAFBO carriers any part of the $80,000,000 appropriated by the Second Supplemental Appropriation Act, 1971, for the fiscal year ended June 30, 1971

(PL 92-18, approved May 26, 1971). Of the $80,000,000 about half, $40,300,000, is appropriated to liquidate, in part, unpaid ship operation subsidies for the calendar year 1968 and earlier calendar years the payment of which has been delayed by disagreements over the subsidy amounts due the carriers. $43,150,521.94 was disbursed on and between May 27, 1971 and June 11, 1971, when disbursement was arrested pending decision of the present motion, leaving about $36,850,000 undisbursed, but how much of each segment comprises a part of the $40,300,000 is not disclosed, perhaps is not quickly determinable. The entire $40,300,000 appropriated to pay past-accrued but unliquidated subsidies is made up not of basic current-operating differential subsidies, which are generally disbursed as earned more or less currently to the extent of about 90% to 9[illegible] of the amount ultimately determined to be due, but with the held-back amounts consisting of balance-amounts due only when finally determined and agreed upon between carrier and Administration. The Secretary of the Maritime Subsidy Board avers without contradiction that of the $43,150,521.94 already disbursed $9,819,000. is the amount paid to the defendant AGAFBO carriers as past-accrued operating subsidies due for the whole of the two calendar years 1965 and 1966 which, together, include the eleven months of the accused rate-reduction. Eleven twenty-fourths of that total is somewhat over $4,500,000. How much of the undisbursed $36,850,000 will become ascribable to past-accrued operating subsidies of the years 1965 and 1966 is not stated. The defendant carriers, it is said, have unpaid vouchers, still unaudited and unauthenticated, lodged with the Board in the aggregate amount of $62,702,765, all of which, if audited and allowed, could, self-evidently, not be paid out of the present appropriation.

The matter is urgent because the availability of the appropriated funds will end at June 30, 1971, and renewal of the appropriation would, it seems, have to await fresh budgetary and Congressional action.

Plaintiffs' central argument is that the present funds are not, within the meaning of the Court's decision, "current subsidy payments" (432 F.2d at 140, col. 2) payment of which ought not be enjoined, but belong to the radically distinguishable class of "payments ... during the violation" (417 F.2d at 977, 432 F.2d at 140, col. 2), which, adventitiously, are found undisbursed and which, therefore, present afresh the, indeed, related but new question, Should the Administration be required to withhold payment of an amount which the Administration may ultimately determine should not be paid because of the command of 46 U.S.C. § 1227, second paragraph ("Section 810")?

Most of the reasons urged for an injunction are not matters that would warrant judicial interference with the Administration's discharge of its responsibilities under the law as spelled out in the earlier decisions of the Court of Appeals, and an injunction could not be granted under the earlier decisions but for a differentiating feature here presented. It may have lurked in earlier determinations, but if so it was not brought forward recognizably.

Plainly enough, the issue here is differentiable from that which the Court determined on the injunction appeal. The dispositive difference is that before any disbursement is made that manifestly raises a substantial question under Section 810 there must be a specific and advertent decision by the Administration to make, to detain pending further review, or to refuse the payment. It is not a payment of past history presenting the question of whether in the light of all the circumstances the Administration should seek to recover money long since paid out and embedded in ship operations. The right to receive subsidy payments for the accused period is now directly in issue between the Administration and each affected carrier. The issue is whether, apart from the usually controlling earnings standards, etc., and in the light ~~of the decision~~ of the Commission's decision under 46 U.S.C. § 814 ("Section 15") and the Congressional command of Section 810, the payment is due and should be made automatically.

There is no distinct evidence that the matter of disbursement has been considered in the light of determining before disbursement the propriety of making a payment entitlement to which depends on the resolution of a policy decision to be made under Section 810. The Board's letter of June 8, 1971, to plaintiff Safir rather indicates the contrary, in part because the plaintiff Safir's peremptory telegram of May 28, 1971, dealt with the whole $80,000,000 and with withholding, as offset, to secure the payment of any recovery that might be directed in proceeding S-243. Yet the Court of Appeals decisions plainly required that no payment be made without a prior advertent and adequate dealing with the policy matters bearing on payability.

Seen in this perspective the duty of the Administration is forthwith to make a decision of record based on stated grounds either to make payment (absolutely or conditionally), to withhold payment pending review, or to refuse payment of so much of the undisbursed $36,849,478.06 appropriated by Public Law 92-18 of May 27, 1971, as represents payments to the defendant carriers in respect of past-accrued operating subsidies for the eleven month period March 31, 1965, to March 1, 1966.

In this analysis, which singles out for immediate rectification the apparent omission of an indispensable stage of judgmatical administrative action, the conventional standards for granting injunctive relief,

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viewed as an extraordinary equitable remedy, are largely if not entirely irrelevant.

It is, accordingly,

ORDERED that the defendants ANDREW GIBSON, Acting Maritime Administrator, Maritime Administration, United States Department of Commerce, JAMES S. DAWSON, JR., Secretary, Maritime Subsidy Board, Maritime Administration, United States Department of Commerce, and MAURICE STANS, Secretary of Commerce of the United States, are enjoined from paying to AMERICAN PRESIDENT LINES, LTD., PRUDENTIAL LINES, INC. and GRACE LINE, INC. (Now operating as "Prudential-Grace Lines, Inc.") and FARRELL LINES, INC., AMERICAN EXPORT ISBRANDTSEN LINES, INC., BLOOMFIELD STEAMSHIP CO., LYKES BROS. STEAMSHIP COMPANY, INC., MOORE McCORMACK LINES, INC., and UNITED STATES LINES, INC., so much of the undisbursed $36,849,478.06 appropriated by Public Law 92-18 of May 27, 1971, as represents payments to the defendant carriers in respect of past-accrued operating subsidies for the eleven month period March 31, 1965, to March 1, 1966, unless after a decision of record is made by the Maritime Administration on stated grounds to do so notwithstanding the determination of the Federal Maritime Commission of December 12, 1967, in Docket No. 65-13 under 46 U.S.C. §§ 814, 817, and the terms of 46 U.S.C. § 1227, or unless upon the taking of adequate stipulations and security measures for refunding that will assure that the issue whether the amounts should have been disbursed is determinable after payment exactly as if the whole decision-making process preceded the payment; and it is further

ORDERED that plaintiff give security in the amount of $5,000 conditioned as required by Rule 65; and it is further

ORDERED that the defendants' application for a stay is denied; and it is further

ORDERED that plaintiffs motion for injunction is in all other respects denied; and it is further

ORDERED that the denial of injunction, as set forth in the preceding decretal paragraph, is stayed until 2:00 P.M. June 24, 1971, and the defendant public officers are directed until then to continue the present voluntary stay of disbursements to the defendant carriers from the appropriated funds.

Brooklyn, New York

June 22, 1971.

U. S. D. J.

FILED
U. S. D[illegible] N.Y.
★ JUN 8 1972 ★
TIME A.M. ....
P.M. 1 ....

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A304

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
- - - - - - - - - - - - - - - - - - - -X

MARSHALL P. SAFIR,

Plaintiff, : 68 C 643

-against- : MEMORANDUM INCORPORATING FINDINGS of FACT and ORDER

ANDREW GIBSON, Acting Maritime Administrator, Maritime Administration, U.S. Department of Commerce, et al.,

Defendants. :
- - - - - - - - - - - - - - - - - - - -X

MICROFILMED

DOOLING, D. J.

Plaintiff moves for an order requiring the Secretary of Commerce to pay the purchase price of the S.S. UNITED STATES into escrow and to establish an escrow of all amounts payable to the present ship owners upon their sales of the S.S.ARGENTINA, the S.S.BRAZIL, the S.S.SANTA ROSE, the SS. SANTA PAULA, and the S.S.CONSTITUTION; the amounts referred to are expected to become payable under the provisions of Public Law 92-296 effective May 17, 1972 to United States Lines, Inc. (on the Government's purchase of the S.S.UNITED STATES under the Public Law), to Moore-McCormack Lines, Incorporated (on the sale of the S.S.ARGENTINA and the S.S.BRAZIL into foreign ownership, registry, and flag pursuant to the provisions of Public Law 92-296 and subject

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to its limitations), to American Export Isbrandtsen Lines, Inc.,(on the sale of the S.S.CONSTITUTION into foreign ownership, registry, and flag pursuant to the same Public Law) and to Prudential-Grace Lines, Inc. under the same Public Law.

It appears that the recommended decision of the Hearing Examiner, rendered April 12, 1972, would require repayments by Moore-McCormack of $759,704, by United States Lines of $3,243,865 and by American Export Lines of $22,373 and that Prudential-Grace would not be required to make any refund payment. The Maritime Subsidy Board of the Maritime Administration has not yet reviewed the recommended decision of the Hearing Examiner. Exceptions have been taken to the Hearing Examiner's report by both sides and the exceptions are still undetermined.

Meanwhile and wholly separately the Congress passed and the President approved Public Law 92-296, effective May 17, 1972. It provides for the disposition of laid-up passenger vessels which had been operated under operating differential subsidy contracts with the United States. The law provides that, except for the vessels INDEPENDENCE and

A306

UNITED STATES, the laid-up vessels may be sold and transferred to foreign ownership, registry and flag with the approval of the Secretary of Commerce provided, among other things, that the seller agrees with the Secretary that an amount equal to the net proceeds received from the sale in excess of existing obligations and incidental expenses shall within a year of receipt be committed to and thereafter used as equity capital to build new vessels which the Secretary determines are built to effectuate the purposes and policies of the Merchant Marine Act of 1936 as amended. Section 2 of the same Act authorizes the Secretary to purchase the UNITED STATES at depreciated cost less the unpaid principal and interest on the mortgage on the vessel for lay-up in the National Defense Reserve Fleet.

Plaintiff contends that since the amount ultimately possibly recoverable by the Government from the AGAFBO steamship companies may rise as high as half a billion dollars if the Examiner's recommended decision is not adopted, the amounts of money coming into the hands of the steamship companies under the new legislation should, in effect, be impounded to secure the payments that the steamship companies might be required to make to the United

States under the final decision.

The motion must be in all respects denied.

The payments being made are not payments of subsidies in respect of the periods during which the offensive conduct was continued. The only ground on which the motion can be made is that a sort of anticipatory execution should be issued to assure that, if the ultimate decision directs greater refunds of operating differential subsidy than the Examiner recommends, funds to pay the refunds will be at hand. However, there is no reason to frustrate the functioning of the statute involved. The evidence presented does not indicate that the ability of any of the steamship companies to respond will be worsened by carrying out the new statute according to its terms or that any of the steamship companies will be in a position to dissipate the funds. Only in the case of the amounts paid to the United States Lines does it appear that funds will pass into the unrestricted possession of the steamship company. The evidence shows that United States Lines is abundantly solvent. Similarly the evidence is that Moore-McCormack and American Export Isbrandtsen Lines, Inc. are solvent and will be able to respond to any requirement that they make refunds of subsidy.

No reason appears why the plaintiff should be entitled at this time to relief which is based essentially on the assumption that the Examiner's recommended decision is wrong and that the final decision will order vastly larger refunds. No such inference can be indulged to support an application for the relief of preliminary injunction. If that inference could be indulged, every other asset and every other pending receipt of any of the steamship companies could with equal plausibility be subjected to a demand that it be placed in escrow or otherwise set aside for execution in the event that large recoveries were ordered by the Subsidy Board. The affidavit of the Assistant Secretary of the Maritime Subsidy Board and the Maritime Administration shows that withheld amounts of operating differential subsidy of the four steamship companies exceed the amounts of the Hearing Examiner's recommended refund except in the case of United States Lines, which according to the official records of the Maritime Administration has a net worth of $74,000,000.

Plaintiff argues that he may have an individual right to participate in any ultimate recovery by the

Government under *qui tam* legislation. No statute authoriz[illegible] a *qui tam* recovery or *qui tam* proceedings has been pointed to and the decision in *Connecticut Action Now, Inc. v. Roberts Plating Company, Inc.*, 2d Cir. 1972, Slip Opinion page 2253 makes it reasonably clear that the plaintiff has no *qui tam* interest in the Government's recovery under Section 810 of the Merchant Marine Act, 1936 as amended (46 U.S.C. § 1227).

It is accordingly

ORDERED that the plaintiff's motions brought on by Orders to Show Cause dated May 4 and May 17, 1972, are in all respects denied.

Brooklyn, New York
June 6, 1972.

U. S. D. J.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
- -x TIME A.M. ....
P.M. ....

MARSHALL P. SAFIR, et al., : 68 C 643

Plaintiffs,

: ORDER ON MANDATE OF U.S. COURT OF APPEALS FOR THE SECOND CIRCUIT

-against- :

ANDREW GIBSON, et al., :

Defendants.

- -x

A310

The plaintiffs appealed from the order of this Court, dated and entered December 9, 1969, denying their application for an injunction and other appropriate relief in all respects, to the U.S. Court of Appeals for the Second Circuit. The said Court decided the appeal by an opinion dated February 26, 1970 (docket No. 34355) modifying and affirming said order as modified. By opinion dated June 18, 1970, the said Court denied petitions for rehearing filed by Intervenors. Upon the opinions and mandate of the Court of Appeals it is

ORDERED, ADJUDGED AND DECREED that

The Maritime Administration is instructed to proceed herein without delay, and consistently with the decisions herein of the United States Court of Appeals for the Second Circuit, and in making its considered decision on grounds consistent with the statute whether to recover the subsidies paid in the past, not to redetermine the issue whether the AGAFBO carriers' concerted action in reducing their rates to an unreasonably low level and holding them there for eleven months was unjustly discriminatory or unfair to Sapphire, provided, however, that the Maritime Administration is not prevented from investigating the nature and extent of the individual carriers' participation in the illegal action, should it find these matters relevant to its ultimate decision on whether to seek recovery of subsidies paid during the continuance of the violation of Section 810, Merchant Marine Act, 1936 as amended (46 U.S.C, § 1227) and, if so, how much and from whom.

Brooklyn, New York
September 17, 1970.

U. S. D. J.

EASTERN DISTRICT OF NEW YORK
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FILED IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.
★ JUN 11 1971 ★
TIME A.M. 3:40
P.M. O

A 312

MARSHALL P. SAFIR, and SAPPHIRE
STEAMSHIP LINES, INC.,

Plaintiffs,

-against-

ANDREW GIBSON, Acting Maritime Administrator, Maritime Administration, United States Department of Commerce, JAMES S. DAWSON, JR., Secretary, Maritime Subsidy Board, Maritime Administration, United States Department of Commerce, and MAURICE STANS, Secretary of Commerce of the United States, AMERICAN PRESIDENT LINES, LTD., PRUDENTIAL LINES, INC. and GRACE LINE, INC. (Now operating as "Prudential-Grace Lines, Inc.") and FARRELL LINES, INC., AMERICAN EXPORT ISBRANDSTEN LINES, INC., BLOOMFIELD STEAMSHIP CO., LYKES BROS. STEAMSHIP COMPANY, INC., MOORE-McCORMACK LINES, INC., and UNITED STATES LINES, INC.,

Defendants.

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68 Civil 643

ORDER TO SHOW CAUS
FOR PRELIMINARY
INTERLOCUTORY
INJUNCTION WITH
TEMPORARY RESTRAI
ING ORDER

Upon the annexed affidavit of MARSHALL P. SAFIR, and upon the proceedings heretofore had herein, it is

✓ ORDERED that defendants show cause before Judge John F. Dooling, Jr., in this Court on June 15, 1971, at 3:30 PM at the Courthouse in Brooklyn, New York, in Court Room 8 why the following relief should not be granted:

1) Why an injunction should not be issued restraining the defendants from making any payment out of an $80,000,000 fund referred to herein for past operating differential subsidies to the members of AGAFBO who are in violation of Section 810 of the Merchant Marine Act, 1936, and

2) Why such other and further appropriate relief as to the Court may seem just and proper should not be

granted, and it is further

~~ORDERED that pending the hearing and determination of the motion, defendants Andrew Gibson, James S. Dawson, Jr. and the Maritime Subsidy Board, be and they are hereby restrained from disbursing to the defendant carriers any monies on account of past operating differential subsidies.~~

~~The foregoing temporary restraining order shall be effective until the further order of this court in order to prevent irreparable damage and to preserve the status quo and prevent the disbursement of monies by the government until the final determination of the rights of the parties to this litigation.~~

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Service of this order and the papers upon which it is made shall be made by mailing copies thereof to the attorneys for the respective defendants on or before June 8, 1971, at 6:00 PM.

Dated: Brooklyn, New York
June 8, 1971.

U. S. D. J.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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MARSHALL P. SAFIR,

Plaintiff,

-against-

ANDREW GIBSON, et al,

Defendants

68 Civil 643

AFFIDAVIT

STATE OF NEW YORK)
COUNTY OF KINGS) S.S.:

MARSHALL P. SAFIR, being duly sworn, deposes and says:

I make this affidavit as an amendment to the order to show cause for injunctive relief which was signed by your Honor on May 4, 1972.

As can be seen by a reading of the New York Times article of May 12, 1972 (Exhibit A) Moore McCormack Lines expects to net approximately $14,000,000 for the sale of its two laid-up vessels; the SS ARGENTINA and SS BRAZIL. (Exhibit I).

On Friday, May 12th this Plaintiff filed with the Department of Commerce Maritime Subsidy Board a document entitled "exceptions to recommended decision of Chief hearing examiner Paul N. Pfeiffer in Docket S 243" Exhibit B with appendices AA, BB, and CC. (Exhibit II).

A3 15

The culpability of Moore McCormack, Prudential-Grace and American Export Isbrandsten Lines is now clear under Section 810 by the precedent established in Docket A-17 #6 SSR 57 (1965). The vessels named herein are owned presently by these companies and full recovery of all subsidies paid to these companies during the 11 month period of violation will exceed the sale value of these vessels.

All of these ships were built with past construction differential subsidies.

Wherefore it is respectfully requested that the Secretary of Commerce be enjoined until such time as the decision whether or not to recover monies illegally paid to these violators in the past is made, and until further order of the court from allowing any "net proceeds" to be paid to the Owners of these vessels (as net proceeds if defined in HR 11589) unless these net proceeds by agreement between the buyer, the seller and the Secretary these funds are escrowed in the custody of the Secretary pending the decision mandated by the Court of Appeals.

MARSHALL P. SAFIR

Sworn to before me this
16th day of May, 1972

Edward J. Kelly

EDWARD J. KELLY
Notary Public, State of New York
No. 24-7214731
Qualified in Kings County
Commission Expires March 30, 1974

A316

Shippers Edgy as Contract Deadline Nears

By WERNER BAMBERGER

The possibility of unsettled labor conditions in the American merchant marine after June 15, when current union agreements expire, is causing apprehension among shippers. James R. Barker, president of Moore-McCormack Lines yesterday told the annual meeting of Moore & McCormack Co., Inc., the line's parent company, that unless contract settlements were reached promptly, continuing uncertainty might be a "negative factor" for the line's cargo-handling operations in the second quarter of this year.

Port Notes

may produce diversions to foreign-flag ships, he added.

Mr. Barker noted that only one out of five unions involved—the National Maritime Union—had settled so far. He added that ship operators were "working hard to finalize the rest of the negotiations."

He also told the meeting, held at 1 Chase Manhattan Plaza, that the steamship line expected to net between $13.5-million and $14-million from the sale of its two laid-up passengers liners, the Argentina and the Brasil, to the Holland-America Line.

Congressional action on a bill authorizing the sale of five American passenger liners has been completed, and President Nixon is expected to sign the measure shortly.

Mr. Barker said the Dutch ship line was expected to pay $20.5-million for the two vessels, and he explained that $6-million of that sum would go toward paying off mortgages on the ships. A total of $700,000 more, he added, will be needed to take care of severance pay obligations to personnel formerly employed on the two vessels.

The net proceeds of the liner sale he said, will be placed into a capital fund to pay for new tonnage, possibly in the bulk-carrier field.

The company realized a net income of $597,000 during the first three months of this year, he said.

at sea will be ad-

MARSHALL P. SAFIR, [illegible]

Plaintiff,

TIME A.M.________
P.M.________

-against-

A317

68 Civil 643

ANDREW GIBSON, Acting Maritime Administrator, Maritime Administration, United States Department of Commerce, JAMES S. DAWSON, JR., Secretary, Maritime Subsidy Board, Maritime Administration, United States Department of Commerce, and Peter Peterson, Secretary of Commerce of the United States, AMERICAN PRESIDENT LINES, LTD., PRUDENTIAL LINES, INC. AND GRACE LINE, INC. (Not operating as "Prudential-Grace Lines, Inc.") and FARRELL LINES, INC., BLOOMFIELD STEAMSHIP CO., AMERICAN EXPORT ISBRANDSTEN LINES, INC. LYKES BROS. STEAMSHIP COMPANY, INC., MOORE-McCORMACK LINES, INC., AND UNITED STATES LINES, INC.,

Defendants.

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ORDER TO SHOW CAUSE FOR PRELIMINARY INTERLOCUTORY INJUNCTION WITH TEMPORARY RESTRAINING ORDER

Upon the annexed affidavit of MARSHALL P. SAFIR, and upon the proceedings heretofore had herein, it is

ORDERED that defendants show cause before Judge John F. Dooling, Jr., in this Court on May 31, 1972, at 4:30 P.M. at the Courthouse in Brooklyn, New York, in Court Room 8 why the following releif should not be granted:

1) Why the Secretary of Commerce in his purchase of the S.S. UNITED STATES should not be restrained from paying the net proceeds as defined in Sect. 2 of the Act over to U.S. LINES CO., pending determination of his decision in this action and subsequent review of this action by the U.S. Court of Appeals 2nd Circuit.

(42)

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2) Why these funds defined as the increment should not be escrowed during this process and thereafter held as an allowance of a credit to its owner of $5.2 Million toward the construction of new vessels.

3) Why such other and further appropriate relief as to the Court may seem just and proper should not be granted and it is further

~~ORDERED that pending the hearing and determination of the motion defendants ANDREW GIBSON, JAMES S. DAWSON, JR., the MARITIME SUBSIDY BOARD and PETER PETERSON, Secretary of Commerce be and they are hereby restrained from disbursing to UNITED STATES LINES CO., the owner of the liner United States any monies on account of its purchase by the government.~~

~~The foregoing temporary restraining order shall be effective until the further order of this Court in order to prevent irreparable damage and to preserve the status quo and prevent the disbursement of monies by the government until the final determination of the rights of the parties to this litegation.~~

Service of this order and the papers upon which it is made shall be delivered by hand to both the U.S. Attorney for the named defendants and the attorney for UNITED STATES LINES, and by mail to the other intervenors, on May 5, 1972.

Dated: Brooklyn, New York
May 4, 1972.

U. S. D. J.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

MARSHALL P. SAFIR, et al.

Plaintiff,

-against-

ANDREW GIBSON, et al,

Defendants.

---x

68 Civil 643

AFFIDAVIT

A319

STATE OF NEW YORK)
COUNTY OF KINGS) S.S.:

MARSHALL P. SAFIR, being duly sworn, deposes and says:

I make this affidavit in support of an application for injunction to once again restrain the Maritime Administrator from disbursing funds to a carrier from whom, it is apparent, he must proceed to recover vast sums of money.

The updated facts are these:

1) On May 2 the Senate passed and sent to the White House, H.R. 11589.

Under Section 2 of this act the Secretary of Commerce is authorized and directed to purchase the S.S. United States under certain terms and conditions see Ex. A (pp 3-4) also Ex. B (page 9).

2) In the administrative hearing S243 before Paul U. Pfeiffer, Chief Hearing Examiner, Maritime Administration an initial decision was finally rendered on April 24, 1972. In this decision the examiner has put to rest the last tenuous hope of the respondents by determining that a serious violation of Section 810 had taken place.

The Public Counsel of the Maritime Administration in his brief also held that Section 810 was violated by all the subsidized member of AGAFBO.

Further Public Counsel proposed that a sum in excess of $30 Million be recovered from U.S. Lines for subsidies paid during the period of violation. (PFF-pg69) The Hearing Examiner on the other hand recommends a total "rounded-off" figure of $3,243,865 be recovered.

The former figure is arithmetical the latter probably political but in either case the findings meet the criteria of the Court of Appeals that a violation occured, that in recovery of funds the discretion of the Secretary of Commerce is limited, and that he "cannot fail to proceed against the violators without considering the interest of the victim---".

Your Honor will recall that in June of 1971 you issued an injunction barring certain payments out of appropriated funds to these violators pending a decision by the administration in this case. You made clear that the primary purpose of the injunction was to prod a reluctant administrator to action. The injunction was ineffective in this respect because only the payment of $1 Million is presently enjoined.

Another year has passes and the process of administrative attrition goes on. The $37 Million sum that I had hoped to have withheld from the violators was cleverly albeit surrepticiously fed to them to fuel another years delay by the Administrator.

A new transfusion of working capital is apparently needed to fuel further delay - to dissipate additional assets - and make recovery when required more difficult.

An injunction as set forth in the moving papers may accomplish this year what your efforts failed to accomplish last year.

No previous application for this relief has been made to any other Court or Judge.

Wherefore, it is respectfully requested that the Secretary of Commerce be enjoined until such time as the decision whether or not to recover past subsidies is made and until further order of the Court from paying any "net proceeds" to the owner of the S.S. United States as "net proceeds" is defined in H.R. 11589 and for such other relief as may be just and proper in the premises.

MARSHALL P. SAFIR

Sworn to before me this
4th day of May, 1972.

MA[illegible] BUSSO, JR.
NOTARY PUBLIC, State of New York
No. 43-56[illegible] Richmond County
Certificate Filed in Richmond County
Commission Expires March 30, 1974

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

MARSHALL P. SAFIR, Pro Se, and on
Behalf of the United States of
America,

Plaintiff,

-against-

Docket No. 77-C-1093
(Dooling, J)

AMERICAN EXPORT LINES;
AMERICAN PRESIDENT LINES;
LYKES BROS. STEAMSHIP CO., INC.;
MOORE McCORMACK LINES, INCORPORATED;
UNITED STATES LINES, INC.;
FARRELL LINES, INC.;
BLOOMFIELD STEAMSHIP CO.;
PRUDENTIAL GRACE LINES, INC.;
PRUDENTIAL STEAMSHIP CO., INC.,

Defendants.

MARSHALL P. SAFIR,

Plaintiff,

-against-

Docket No. 68-C-643
(Dooling, J)

ROBERT W. BLACKWELL, Assistant
Secretary of Commerce of the
United States of America,
and
JUANITA KREPS, Secretary of
Commerce of the United States
of America,
and
AMERICAN EXPORT LINES;
AMERICAN PRESIDENT LINES;
LYKES BROS. STEAMSHIP CO., INC.;
MOORE McCORMACK LINES, INCORPORATED;
UNITED STATES LINES, INC.;
FARRELL LINES, INC.;
BLOOMFIELD STEAMSHIP CO.;
PRUDENTIAL GRACE LINES, INC.;
PRUDENTIAL STEAMSHIP CO., INC.,

Defendants.

STATEMENT OF MATERIAL FACTS AS TO WHICH THERE IS NO GENUINE ISSUE TO BE TRIED IN SUPPORT OF MOTION OF THE NON-TRADE LINES AMERICAN PRESIDENT LINES, LTD., FARRELL LINES, INC., PRUDENTIAL LINES, INC. AND PSS STEAMSHIP COMPANY, INC. TO DISMISS OR, ALTERNATIVELY, FOR SUMMARY JUDGMENT IN 77-C-1093

Pursuant to Rule 9(g) of the General Rules of the United States District Court for the Eastern District of New York, non-trade line defendants American President Lines, Ltd., Farrell Lines, Inc., Prudential Lines, Inc., and PSS Steamship

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Company, Inc. submit this Statement of Material Facts as to Which There Is No Genuine Issue to Be Tried, in support of their motion to dismiss or, alternatively, for summary judgment in 77-C-1093. The non-trade lines contend that there is no genuine issue to be tried concerning the following material facts:

1. On May 26, 1977, plaintiff commenced 77-C-1093 in this Court. The underlying theory of his complaint was that the non-trade lines violated the False Claims Act, 31 U.S.C. §231 et seq., in claiming and receiving subsidies applicable to the 11-month period in 1965 and 1966 during which the Atlantic and Gulf American Flag Berth Operators conference ("AGAFBO") was held to be in violation of Section 810 of the Merchant Marine Act, 1936 ("Section 810"). This is the first time plaintiff sued the defendants pursuant to the Act or gave the United States notice that he was bringing an informer's suit pursuant to the Act. Plaintiff admitted in his complaint that the "issues involved ... herein are now before the United States Supreme Court in Docket 76-1505" and that the "history of the case from 1968 to 1977 is spelled out in detail in Attachments A and B [his petition for a writ of certiorari and the appendix thereto filed in the Supreme Court]."

2. On September 13, 1977, plaintiff filed a proposed amended complaint in 68-C-643 with this Court. In his proposed complaint, plaintiff again alleged that the non-trade lines violated the False Claims Act in claiming and receiving subsidies applicable to the 11-month period in 1965 and 1966 during which AGAFBO was held to be in violation of Section 810. Plaintiff did not give the United States notice, as required by the Act, at the time he filed his proposed complaint.

Information in the Possession of the United States

3. In March 1965, the Military Sea Transportation Service of the Department of Defense ("MSTS") determined that Sapphire Lines was a common carrier.

4. On March 29, 1965, AGAFBO put rate reductions into effect in the trade between United States Atlantic and Gulf ports and ports in the United Kingdom/Bordeaux-Hamburg range in Europe, a trade which was also being served by Sapphire Lines. These rates were on file with the Federal Maritime Commission ("FMC").

5. On April 8, 1965 and again on May 19, 1966, plaintiff appeared before a subcommittee of the Joint Economic Committee of the Congress to describe the circumstances which resulted in the formation of Sapphire Lines and the competitive opposition which Sapphire was experiencing from AGAFBO. A representative of the FMC was present at the hearing during Mr. Safir's testimony and testified that the matter had already been brought to the Commission's attention and that the agency was collecting data looking to a possible formal investigation. The Chairman of the FMC later testified to the Joint Economic Committee that the formal investigation was underway. The Sapphire-AGAFBO dispute was the subject of substantial, additional considerations at the hearings.

6. The AGAFBO rate reductions were made the subject of an FMC investigation in FMC Docket 65-13, initiated by Order of May 6, 1965. Mr. Safir and a number of employees of Sapphire Lines, representatives of a number of AGAFBO lines, and officials of a number of governmental departments--including the Maritime Administration, the Department of Defense, the Department of State and the General Services Administration--testified at FMC

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hearings lasting 61 days and involving 500 documentary exhibits. The Sapphire-AGAFBO dispute was ventilated across thousands of pages of transcript. It was a major focus of an Initial Decision issued on December 15, 1966 and the final FMC decision issued on December 12, 1967, in which AGAFBO's rate reductions were determined to be unjustly discriminatory and unfair to Sapphire Steamship Lines and in violation of Section 15 of the Shipping Act, 1916 ("Section 15").

7. On December 19, 1967, seven days after the FMC had issued its decision in Docket 65-13, Mr. Safir, through his counsel, wrote a letter to the Maritime Subsidy Board and Acting Maritime Administrator, with a copy to the Attorney General, demanding that subsidy payments to the AGAFBO lines be terminated pursuant to Section 810 and that subsidies previously paid for the period of the AGAFBO rate reductions be recovered from the lines.

8. A letter to substantially the same effect was sent by Mr. Safir's counsel to the Secretary of Commerce on January 13, 1968 and a further demand was made to the Acting Maritime Administrator, with a copy to the Attorney General, on February 13, 1968.

9. Also following the FMC's final decision, the Department of Justice took action to collect civil penalties under Section 15 from those AGAFBO members which served the United Kingdom/Bordeaux-Hamburg range. No penalty was sought or collected from the non-trade lines, the Department of Justice explaining that civil penalties had been sought only from the "culpable" AGAFBO members.

10. In January 1966 Sapphire Lines filed an application with the Maritime Administration for Ship Mortgage Insurance under Title XI of the Merchant Marine Act, 46 U.S.C. §1271 *et*

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seq. The application was conditionally approved by the agency on May 5, 1966. That application, which was sworn to by officers of Sapphire, including Mr. Safir, included: (i) detailed information as to the ownership of Sapphire and the United States citizenship of its owners, officers and directors, all of which was necessary in order to establish Sapphire's U.S. citizenship, which at the time of the application was a statutory prerequisite to a grant of Title XI insurance; (ii) detailed information as to the vessels owned and operated by Sapphire, including the fact of U.S. documentation; (iii) "full details" as to the "services, routes or lines" on which the Sapphire vessels were operated; and (iv) a statement of the "type and nature of the cargo carried."

11. During the 1965-1966 period, Sapphire Lines, as required by Maritime Administration/ Maritime Subsidy Board regulations, filed certified cargo reports with that agency for each sailing of each of its vessels. The reports were filed within ten days after the termination of a voyage, and identified, inter alia, the operator's name and citizenship, vessel name and flag, each port served, and the cargo loaded and discharged at each port by cargo type.

12. During the 1965-66 period, Sapphire Lines filed its tariffs with the FMC.

13. Plaintiff commenced 68-C-643 in this Court on June 24, 1968. The defendants named in that action were the Acting Maritime Administrator and the Secretary of Commerce. The issue of the AGAFBO lines' entitlement to subsidies applicable to the 11-month period beginning March 29, 1965 was extensively litigated in that proceeding.

14. In October 1969, the Maritime Subsidy Board ("MSB"), pursuant to the mandate of the Second Circuit, initiated its MSB Docket S-243 investigation into the violations of Section 810 which were claimed by Mr. Safir. Mr. Safir, as well as all subsidized AGAFBO lines, were named parties. A lengthy hearing was conducted before the Board's Chief Administrative Law Judge, and in the hearing the non-trade lines claimed lack of complicity in the rate reductions which were central to the proceeding. The Administrative Law Judge accepted the claims of the non-trade lines in his recommended decision of April 24, 1972. Thus, while the Administrative Law Judge found Section 810 to have been violated by the trade lines, he explicitly found the non-trade lines not to have participated in the illegal rate conduct, and therefore not to have violated Section 810. He further found that there was no basis on which to require a subsidy refund from the non-trade lines.

15. It was Mr. Safir's position throughout the MSB Docket S-243 proceeding that all facts material or relevant to a finding of violation of Section 810 had already been spread on the record in FMC Docket 65-13. At the outset of the S-243 hearing, it was thus Mr. Safir's position that he would introduce no documentary evidence in support of his case since he was "relying upon the wording of the FMC decision in Docket 65-13." When Mr. Safir was examined by Maritime Administration Public Counsel as to the nature and scope of Sapphire Lines service, he took the position that

> "I think all of this, Mr. McMorrow, is a matter of record in 65-13, and I would prefer not to use my memory. But it's all there as to what the service was and I would rather not reopen it."

With respect to Sapphire's status as a common carrier, it was Mr. Safir's position "that the record is clear, the findings are clear, the common carrier status of Sapphire Lines was established in 65-13." Mr. Safir thus agreed with the characterization that "you are relying on the FMC decision with respect to common carrier service in 65-13." Still later in the proceedings, Mr. Safir indicated his intention to oppose introduction into the record of evidence "which would represent a new litigation" of the common carrier issue.

16. As of 1971 there were for the subsidized AGAFBO lines very sizable amounts of subsidy applicable to the years 1965 and 1966, the period of the AGAFBO rate reductions, accrued and unpaid. All Maritime Administration subsidy rates had been determined and all audits performed, but there were insufficient funds appropriated to cover payment. The Maritime Administration sought a supplemental appropriation from the Congress to cover all payments, and that request was made the subject of hearings before the Merchant Marine Subcommittee of the Senate Committee on Commerce. Mr. Safir appeared to testify in opposition to the appropriation of funds to pay the accrued subsidy for the AGAFBO lines on grounds of the pendancy of the MSB Docket S-243 proceeding. Inquiry as to the matter was addressed to the Maritime Administrator by the Committee, and the Maritime Administrator urged that the funds be appropriated, explaining that "these funds in my judgment are now due and payable. These companies have other sources of funds should Mr. Saffir's [sic] claim be sustained." The funds were thereafter appropriated by the Congress.

17. On June 7, 1971, Mr. Safir petitioned to this Court in 68-C-643 for an injunction restraining the Maritime

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Administration's payment of outstanding subsidy applicable to the years 1965 and 1966 to the AGAFBO lines on the same grounds earlier advanced to the Congress. The injunction was opposed by the Maritime Administrator and by the lines. This Court refused to bar payment to each recipient, providing that adequate security was demonstrated should recovery be ordered.

18. The MSB's Opinion and Order in Docket S-243 was issued April 16, 1973. The Board affirmed the violation by the trade lines. With respect to the non-trade lines, the Board affirmed the findings of its Chief Administrative Law Judge that the lines had not participated in the illegal rate conduct. While the Board, unlike the Administrative Law Judge, found a "technical" violation of Section 810 by the non-trade lines, this was solely because the lines had been members of AGAFBO at the time of the rate reductions. The Board emphasized that the non-trade lines' violation of Section 810 was "technical" only and did not justify or require the recovery of subsidy.

19. The Board action as to the non-trade lines was affirmed by the Secretary of Commerce on September 4, 1974.

20. Mr. Safir's petition for a writ of certiorari in Docket 76-1505 and the appendix thereto were filed in the United States Supreme Court on April 26, 1977, and were concurrently served on the Department of Justice. At his deposition in 77-C-1093 taken on September 28, 1977, Mr. Safir specifically reaffirmed the allegations of his complaint to the effect that all of the information which formed the basis of that action was contained in the petition and appendix filed in the Supreme Court.

Statute of Limitations

21. Defendant American President Lines, Ltd. submitted final vouchers for operating-differential subsidies accruing to it during 1965 and 1966 to the Maritime Administration on January 6, 1971 and January 11, 1971, respectively.

22. Defendant Prudential-Grace Lines, Inc. submitted final vouchers for operating-differential subsidies accruing to Grace Line, Inc. during 1965 and 1966 to the Maritime Administration on February 26, 1971 and March 15, 1971, respectively.

23. Prudential Steamship Company, Inc. submitted final vouchers for operating-differential subsidies accruing to it during 1965 and 1966 to the Maritime Administration on January 27, 1971 and February 9, 1971, respectively.

24. Defendant Farrell Lines, Inc. submitted final vouchers for operating-differential subsidies accruing to it during 1965 and 1966 to the Maritime Administration on May 29, 1970 and October 1, 1970, respectively.

Dated: New York, New York
October 18, 1977

Yours, etc.

BARRETT SMITH SCHAPIRO SIMON &
ARMSTRONG
Attorneys for American President
Lines, Ltd., Prudential Lines,
Inc., PSS Steamship Company, Inc.
and Farrell Lines, Inc.

By ______________________________
A Member of the Firm

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734 - 15th Street, N.W.
Washington, D.C. 20005

Attorneys for American President Lines, Ltd., Prudential Lines, Inc. and PSS Steamship Company, Inc.

Verne W. Vance ✓
FOLEY, HOAG & ELIOT
10 Post Office Square
Boston, Massachusetts 02109

Attorneys for Farrell Lines, Inc.

TO: MARSHALL P. SAFIR, Pro Se
41 Flatbush Avenue
Brooklyn, New York 11217

UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK
Attn: Miss Buck ✓
United States Courthouse
225 Cadman Plaza East
Brooklyn, New York 11201

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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- x

MARSHALL P. SAFIR, Pro Se, and on Behalf of the United States of America,

Plaintiff,

-against-

Docket No. 77-C-1093
(Dooling, J)

AMERICAN EXPORT LINES
AMERICAN PRESIDENT LINES
LYKES BROS. STEAMSHIP CO., INC.
MOORE McCORMACK LINES, INCORPORATED
UNITED STATES LINES, INC.
FARRELL LINES, INC.
BLOOMFIELD STEAMSHIP CO.
PRUDENTIAL GRACE LINES, INC.
PRUDENTIAL STEAMSHIP CO., INC.

Defendants.

- x

MARSHALL P. SAFIR,

Plaintiff,

-against-

Docket No. 68-C-643
(Dooling, J)

ROBERT W. BLACKWELL, Assistant Secretary of Commerce of the United States of America,
and
JUANITA KREPS, Secretary of Commerce of the United States of America,
and
AMERICAN EXPORT LINES
AMERICAN PRESIDENT LINES
LYKES BROS. STEAMSHIP CO., INC.
MOORE McCORMACK LINES, INCORPORATED
UNITED STATES LINES, INC.
FARRELL LINES, INC.
BLOOMFIELD STEAMSHIP CO.
PRUDENTIAL GRACE LINES, INC.
PRUDENTIAL STEAMSHIP CO., INC.

Defendants.

- x

AFFIDAVIT OF KAREN S. SCHROCK IN SUPPORT OF MOTION TO DISMISS OR, ALTERNATIVELY, FOR SUMMARY JUDGMENT

STATE OF CALIFORNIA)
) SS:
COUNTY OF ALAMEDA)

KAREN S. SCHROCK, being duly sworn, deposes and says:

1. I am employed by defendant American President Lines, Ltd. as Assistant to the Treasurer. I have been employed in this capacity since August 1976.

2. As Assistant to the Treasurer, with respect to operating-differential subsidies, I am responsible for assisting in the administration of the subsidy contract of American President Lines, Ltd., in the maintenance of the subsidy records of the company, and in the calculation, billing and accrual of subsidies.

3. This affidavit is being submitted in support of the motion by defendants American President Lines, Ltd., [illegible]ential Lines, Inc., PSS Steamship Company, Inc. and Farrell Lines, Inc. ("the non-trade lines") to dismiss or, alternatively, for summary judgment.

4. The following statements are based upon my personal examination of records relating to operating-differential subsidies accruing to American President Lines, Ltd. during calendar years 1965 and 1966, and are true to the best of my knowledge and belief:

(a) During calendar years 1965 and 1966, following each quarter, American President Lines, Ltd. submitted vouchers to the Maritime Administration in which it claimed 90 percent of estimated operating-differential subsidies accruing to it in the preceding quarter.

(b) Following calendar years 1965 and 1966, American President Lines, Ltd. prepared expense audits relating to its eligibility for operating-differential subsidies accruing in the preceding calendar year. These audits were submitted to the Maritime Administration, and were reviewed and checked by Maritime Administration auditors. Thereafter, upon the approval of the Maritime Administration auditors, American President

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Lines, Ltd. submitted vouchers in which it claimed 95 percent of estimated operating-differential subsidies accruing to it in the preceding year, minus subsidy payments already made to it for such period.

(c) Final accountings for operating-differential subsidies accruing to American President Lines, Ltd. during calendar years 1965 and 1966 were submitted to the Maritime Administration on December 28, 1970 and January 6, 1971, respectively. These final accountings were approved by the Maritime Administration on January 6, 1971 and January 11, 1971, respectively.

(d) Final vouchers for operating-differential subsidies accruing to American President Lines, Ltd. during calendar years 1965 and 1966 were submitted to the Maritime Administration on January 6, 1971 and January 11, 1971, respectively. In these final vouchers, subsidies of $1,717,278.69 for calendar year 1965 and $1,328,061.18 for calendar year 1966 were claimed.

(e) The final vouchers for calendar years 1965 and 1966 were stamped by the Maritime Administration as paid by January 11, 1971 and January 14, 1971, respectively.

(f) American President Lines, Ltd. received payment on the final vouchers for calendar years 1965 and 1966 by Treasury check dated June 3, 1971.

5. Annexed to this affidavit are true copies of the public vouchers sent to American President Lines, Ltd. after the Maritime Administration's approval of the company's final vouchers for calendar years 1965 and 1966.

Karen S. Schrock
Karen S. Schrock

Sworn to before me this
14th day of October, 1977.

Kathryn M. Keehner
Notary Public

KATHRYN M. KEEHNER
NOTARY PUBLIC - CALIFORNIA
COUNTY OF ALAMEDA
My Commission Expires May 21, 1978

A-235

Standard Form No. 1034a
1034-209

PUBLIC VOUCHER FOR PURCHASES AND SERVICES OTHER THAN PERSONAL

U.S. DEPARTMENT, BUREAU, OR ESTABLISHMENT AND LOCATION Department of Commerce Maritime Administration	DATE VOUCHER PREPARED January 6, 1971	VOUCHER NUMBER
	CONTRACT NUMBER AND DATE FMB-50, May 11, 1956	PAID BY 02881 JAN 11 71
	REQUISITION NUMBER AND DATE /	

PAYEE'S NAME AND ADDRESS

American President Lines, Ltd.
601 California Street
San Francisco, California 94108

DATE INVOICE RECEIVED

DISCOUNT TERMS

PAYEE'S ACCOUNT NUMBER
MC-7102

GOVERNMENT B/L NUMBER

SHIPPED FROM TO WEIGHT

NUMBER AND DATE OF ORDER	DATE OF DELIVERY OR SERVICE	ARTICLES OR SERVICES (Enter description, item number of contract or Federal supply schedule, and other information deemed necessary)	QUANTITY	UNIT PRICE COST	UNIT PRICE PER	AMOUNT

Amount due under Operating-Differential Subsidy Agreement, Contract No. FMB-50, dated as of May 11, 1956, as amended, to which the undersigned Operator is a party, covering voyages terminated during the period commencing January 1, 1958, and ending December 31, 1967, as supported by affidavit attached hereto. Payment by the Maritime Administration of all or part of the amount claimed herein shall not be construed as approval as to the correctness of the amount stated to have been expended, nor as a waiver of any right or remedy the Operator, or the Maritime Administration, or Secretary of Commerce, acting by and through the Maritime Subsidy Board, or any predecessor or successor, may have under the terms of said Agreement or otherwise.

TOTAL $1,717,273.69

(Use continuation sheet(s) if necessary)

(Payee must NOT use the space below)

PAYMENT:
☐ COMPLETE
☐ PARTIAL
☐ FINAL
☐ PROGRESS
☐ ADVANCE

Final 1965

DIFFERENCES

Amount verified; correct for $1,717,273.69

(Signature or initials)

MEMORANDUM

ACCOUNTING CLASSIFICATION (Appropriation symbol must be shown; other classification optional)

See attached

PAYEE'S COPY

PAID BY				
	CHECK NUMBER	ON TREASURER OF THE UNITED STATES	CHECK NUMBER	ON (Name of bank)
	CASH $	DATE		

Standard Form No. 1034a
7 GAO 3000
[illegible]

PUB

VOUCHER FOR PURCHASES AND SERVICES OTHER THAN PERSONAL

A336

U.S. DEPARTMENT, BUREAU, OR ESTABLISHMENT AND LOCATION Department of Commerce Maritime Administration	DATE VOUCHER PREPARED JANUARY 11, 1971	VOUCHER NUMBER
	CONTRACT NUMBER AND DATE FMB-50, MAY 11, 1956	PAID BY 02930 JAN 14
	REQUISITION NUMBER AND DATE	

PAYEE'S NAME AND ADDRESS

American President Lines, Ltd.
601 California Street
San Francisco, California 94108

DATE INVOICE RECEIVED

DISCOUNT TERMS

PAYEE'S ACCOUNT NUMBER
MC-7104

SHIPPED FROM　TO　WEIGHT

GOVERNMENT B/L NUMBER

NUMBER AND DATE OF ORDER	DATE OF DELIVERY OR SERVICE	ARTICLES OR SERVICES (Enter description, item number of contract or Federal supply schedule, and other information deemed necessary)	QUANTITY	UNIT PRICE COST	UNIT PRICE PER	AMOUNT

[illegible] due under Operating-Differential Subsidy Agreement, Contract No. FMB-50, dated as of May 11, 1956, as amended, to which the undersigned Operator is a party, covering voyages terminated during the period commencing January 1, 1958, and ending December 31, 1967, as supported by affidavit attached hereto. Payment by the Maritime Administration of all or part of the amount claimed herein shall not be construed as approval as to the correctness of the amount stated to have been expended, nor as a waiver of any right or remedy the Operator, or the Maritime Administration, or Secretary of Commerce, acting by and through the Maritime Subsidy Board, or any predecessor or successor, may have under the terms of said Agreement or otherwise.

(Use continuation sheet(s) if necessary)　(Payee must NOT use the space below)　TOTAL $1,326,301.[illegible]

PAYMENT:
☐ COMPLETE
☐ PARTIAL
☐ FINAL
☐ PROGRESS
☐ ADVANCE

Final 1966

DIFFERENCES

Amount verified; correct for

(Signature or initials)

MEMORANDUM

ACCOUNTING CLASSIFICATION (Appropriation symbol must be shown; other classification optional)

See attached

PAID BY	CHECK NUMBER	ON TREASURER OF THE UNITED STATES	CHECK NUMBER　ON (Name of bank)
	CASH $	DATE	

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- x

MARSHALL P. SAFIR, Pro Se, and on Behalf of the United States of America,

Plaintiff,

-against-

Docket No. 77-C-1093
(Dooling, J)

AMERICAN EXPORT LINES
AMERICAN PRESIDENT LINES
LYKES BROS. STEAMSHIP CO., INC.
MOORE McCORMACK LINES, INCORPORATED
UNITED STATES LINES, INC.
FARRELL LINES, INC.
BLOOMFIELD STEAMSHIP CO.
PRUDENTIAL GRACE LINES, INC.
PRUDENTIAL STEAMSHIP CO., INC.

Defendants.

- x

MARSHALL P. SAFIR,

Plaintiff,

-against-

Docket No. 68-C-643
(Dooling, J)

ROBERT W. BLACKWELL, Assistant Secretary of Commerce of the United States of America,
and
JUANITA KREPS, Secretary of Commerce of the United States of America,
and
AMERICAN EXPORT LINES
AMERICAN PRESIDENT LINES
LYKES BROS. STEAMSHIP CO., INC.
MOORE McCORMACK LINES, INCORPORATED
UNITED STATES LINES, INC.
FARRELL LINES, INC.
BLOOMFIELD STEAMSHIP CO.
PRUDENTIAL GRACE LINES, INC.
PRUDENTIAL STEAMSHIP CO., INC.

Defendants.

- x

AFFIDAVIT OF GERALD J. IANNONE IN SUPPORT OF MOTION TO DISMISS OR, ALTERNATIVELY, FOR SUMMARY JUDGMENT

STATE OF NEW YORK)
) SS:
COUNTY OF NEW YORK)

GERALD J. IANNONE, being duly sworn, deposes and says:

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1. I am employed by defendant Prudential Lines, Inc. as Manager of Subsidy Administration. I have been employed by Prudential Lines, Inc. since March 1974, and have been Manager of Subsidy Administration since December 1975.

2. As Manager of Subsidy Administration, I administer the operating-differential subsidy contract of Prudential Lines, Inc. My responsibilities include supervising the maintenance of the operating-differential subsidy records of Prudential Lines, Inc., Prudential-Grace Lines, Inc., Grace Lines, Inc. and Prudential Steamship Company, Inc., and supervising the preparation of operating-differential subsidy reports, accountings and vouchers submitted to the Maritime Administration.

3. This affidavit is being submitted in support of the motion by defendants American President Lines, Ltd., Prudential Lines, Inc., PSS Steamship Company, Inc. and Farrell Lines, Inc. ("the non-trade lines") to dismiss or, alternatively, for summary judgment.

4. The following statements are based upon my personal examination of records concerning operating-differential subsidies accruing to Grace Lines, Inc. and Prudential Steamship Company, Inc., during calendar years 1965 and 1966, and are true to the best of my knowledge and belief:

(a) During calendar years 1965 and 1966, following each quarter, Grace Lines, Inc. and Prudential Steamship Company, Inc. submitted vouchers to the Maritime Administration in which they claimed 90 percent of estimated operating-differential subsidies accruing in the preceding quarter.

(b) For each of calendar years 1965 and 1966, Grace Lines, Inc. and Prudential Steamship Company, Inc. prepared expense audits relating to their eligibility for operating-differential subsidies. The expense audits of Prudential Steamship Company, Inc. were submitted to the Maritime Administration after the close of each year. The expense audits of Grace Lines, Inc. were submitted to the Maritime Administration in 1970. All of these audits were reviewed and checked by Maritime Administration auditors. Thereafter, upon the approval of the Maritime Administration auditors, the companies submitted vouchers in which they claimed 95 percent of estimated operating-differential subsidies accruing to them in the relevant years, minus subsidy payments already made to them for such periods.

(c) Final accountings for operating-differential subsidies accruing to Grace Lines, Inc. during calendar years 1965 and 1966 were submitted to the Maritime Administration on February 22, 1971 and March 16, 1971, respectively. These final accountings were approved by the Maritime Administration on March 5, 1971 and March 24, 1971, respectively.

(d) Final accountings for operating-differential subsidies accruing to Prudential Steamship Company, Inc. during calendar years 1965 and 1966 were submitted to the Maritime Administration on January 28, 1971 and February 8, 1971, respectively. These final accountings were approved by the Maritime Administration on February 18, 1971 and February 25, 1971, respectively.

(e) Final vouchers for operating-differential subsidies accruing to Grace Lines, Inc. during calendar years 1965 and 1966 were submitted to the Maritime Administration on February 26, 1971 and March 15, 1971, respectively. In these final vouchers, subsidies of $1,096,764.77 for calendar year 1965 and $1,501,107.37 for calendar year 1966 were claimed by Prudential-Grace Lines, Inc.

(f) The final vouchers submitted by Prudential-Grace Lines, Inc. for calendar years 1965 and 1966 were stamped by the Maritime Administration as paid by March 9, 1971 and March 25, 1971, respectively.

(g) Prudential-Grace Lines, Inc. received payment from Treasury on its final vouchers for calendar years 1965 and 1966 on June 7, 1971.

(h) Final vouchers for operating-differential subsidies accruing to Prudential Steamship Company, Inc. during calendar years 1965 and 1966 were submitted to the Maritime Administration on January 27, 1971 and February 9, 1971, respectively. In these final vouchers, subsidies of $42,540.77 for calendar year 1965 and $118,811.26 for calendar year 1966 were claimed by Prudential Steamship Company, Inc.

(i) The final vouchers submitted by Prudential Steamship Company, Inc. for calendar years 1965 and 1966 were stamped by the Maritime Administration as paid by February 10, 1971 and February 25, 1971, respectively.

(j) Prudential Steamship Company, Inc. received payment from Treasury on its final vouchers for calendar years 1965 and 1966 on June 8, 1971.

5. Annexed to this affidavit are true copies of the public vouchers sent to Prudential-Grace Lines, Inc. and Prudential Steamship Company, Inc. after the Maritime Administration's approval of their final vouchers for calendar years 1965 and 1966.

GERALD J. IANNONE

SWORN TO BEFORE ME THIS

[illegible] day of October, 1977.

Notary Public

GEORGE H. FRIEDHEIM
Notary Public, State of New York
No. 03-6407925
Qualified in Bronx County
Cert. filed with Bronx County Clerk

Standard Form No. 1034a
7 GAO 5000
1034-209

PUBLIC VOUCHER FOR PURCHASES AND SERVICES OTHER THAN PERSONAL

U.S. DEPARTMENT, BUREAU, OR ESTABLISHMENT AND LOCATION Department of Commerce Maritime Administration	DATE VOUCHER PREPARED February 26, 1971	VOUCHER NUMBER
	CONTRACT NUMBER AND DATE	PAID BY 3/51 5
	REQUISITION NUMBER AND DATE	

PAYEE'S NAME AND ADDRESS

Prudential-Grace Lines, Inc.
c/o Mr. E. Cotter - Room 601
Charrier, McAteer & Fettig
1776 K Street, N.W.
Washington, D.C. 20006

A341

DATE INVOICE RECEIVED

DISCOUNT TERMS

PAYEE'S ACCOUNT NUMBER

SHIPPED FROM	TO	WEIGHT	GOVERNMENT B/L NUMBER

NUMBER AND DATE OF ORDER	DATE OF DELIVERY OR SERVICE	ARTICLES OR SERVICES (*Enter description, item number of contract or Federal supply schedule, and other information deemed necessary*)	QUANTITY	UNIT PRICE COST	UNIT PRICE PER	AMOUNT

Amount due under Operating-Differential Subsidy Agreement, Contract FMB-49 dated as of January 1, 1958, as amended to which the undersigned Operator is a party, covering voyages terminated during the period commencing January 1, 1958 and ending December 31, 1967, as supported by affidavit attached hereto. Payment by the Maritime Administration of all or part of the amount claimed herein shall not be construed as approval as to the correctness of the amount stated to have been expended, nor as a waiver of any right or remedy the Operator, or the Maritime Administration, or Secretary of Commerce, acting by and through the Maritime Subsidy Board, or any predecessor or successor, may have under the terms of said agreement or otherwise.

(Use continuation sheet(s) if necessary) (Payee must NOT use the space below) TOTAL $1,096,764.77

PAYMENT:
☐ COMPLETE
☐ PARTIAL
☐ FINAL
☐ PROGRESS
☐ ADVANCE

DIFFERENCES

Amount verified; correct for

(*Signature or initials*)

MEMORANDUM

ACCOUNTING CLASSIFICATION (*Appropriation symbol must be shown; other classification optional*)

See attached

PAYEE'S COPY

PAID BY				
	CHECK NUMBER	ON TREASURER OF THE UNITED STATES	CHECK NUMBER	ON (*Name of bank*)
	CASH $	DATE		

* GPO 1961 OF - 651281 - 37

A342

PRUDENTIAL-GRACE LINES, INC.

Attached to the Voucher in the Amount of $1,096,764.77 Covering Final Payment of Operating-Differential Subsidy for the Calendar Year 1965.

This payment is subject to audit review and approval of the accounting for the recapture period ending December 31, 1967, and to such adjustments as may be necessitated thereby; and that it is without prejudice to the Rights of either party with respect to the obligations of Prudential-Grace Lines, Inc. for subsidy recapture.

PREPARED BY:
MARITIME ADMINISTRATION
OFFICE OF FINANCE
DIVISION OF EXTERNAL AUDITS AND FINANCIAL ANALYSIS
MARCH 17, 1971

Standard Form No. 1034a
[illegible]
1034-209

P[illegible]LIC VOUCHER FOR PURCHASES A[illegible] SERVICES OTHER THAN PERSONAL

U.S. DEPARTMENT, BUREAU, OR ESTABLISHMENT AND LOCATION Department of Commerce Maritime Administration	DATE VOUCHER PREPARED March 15, 1971	VOUCHER NUMBER
	CONTRACT NUMBER AND DATE	PAID BY [illegible] MAR 25 71
	REQUISITION NUMBER AND DATE	

PAYEE'S NAME AND ADDRESS

Prudential-Grace Lines, Inc.
c/o Mr. E.Cotter - Room 601
Charrier, McAteer & Fettig
1776 K Street, N.W.
Washington, D.C. 20006

A343

DATE INVOICE RECEIVED

DISCOUNT TERMS

PAYEE'S ACCOUNT NUMBER

SHIPPED FROM | TO | WEIGHT | GOVERNMENT B L NUMBER

NUMBER AND DATE OF ORDER	DATE OF DELIVERY OR SERVICE	ARTICLES OR SERVICES (*Enter description, item number of contract or Federal supply schedule, and other information deemed necessary*)	QUANTITY	UNIT PRICE COST	UNIT PRICE PER	AMOUNT
		Amount due under Operating-Differential Subsidy Agreement, Contract FMB-49 dated as of January 1, 1958, as amended to which the undersigned Operator is a party, covering voyages terminated during the period commencing January 1, 1958 and ending December 31, 1967, as supported by affidavit attached hereto. Payment by the Maritime Administration of all or part of the amount claimed herein shall not be construed as approval as to the correctness of the amount stated to have been expended, nor as a waiver of any right or remedy the Operator, or the Maritime Administration, or Secretary of Commerce, acting by and through the Maritime Subsidy Board, or any predecessor or successor, may have under the terms of said agreement or otherwise.				

(Use continuation sheet(s) if necessary) **(Payee must NOT use the space below)** TOTAL $1,501,107.37

PAYMENT:
- ☐ COMPLETE
- ☐ PARTIAL
- ☐ FINAL
- ☐ PROGRESS
- ☐ ADVANCE

DIFFERENCES

Amount verified; correct for

(*Signature or initials*)

MEMORANDUM

ACCOUNTING CLASSIFICATION (*Appropriation symbol must be shown; other classification optional*)

See attached

PAID BY	CHECK NUMBER	ON TREASURER OF THE UNITED STATES	CHECK NUMBER ON (*Name of bank*)
	CASH $	DATE	

PAYEE'S COPY

PRUDENTIAL-GRACE LINES, INC.

A344

Attached to the Voucher in the Amount of $1,501,707.37 Covering Final Payment of Operating-Differential Subsidy for the Calendar Year 1966.

This payment is subject to audit review and approval of the accounting for the recapture period ending December 31, 1967, and to such adjustments as may be necessitated thereby; and that it is without prejudice to the Rights of either party with respect to the obligations of Prudential-Grace Lines, Inc. for subsidy recapture.

PREPARED BY:
MARITIME ADMINISTRATION
OFFICE OF FINANCE
DIVISION OF EXTERNAL AUDITS AND FINANCIAL ANALYSIS
MARCH 29, 1971

Standard Form No. 1034a
GAO 5000
[illegible]

PUBLIC VOUCHER FOR PURCHASES AND SERVICES OTHER THAN PERSONAL

U.S. DEPARTMENT, BUREAU, OR ESTABLISHMENT AND LOCATION Department of Commerce Maritime Administration	DATE VOUCHER PREPARED January 27, 1971	VOUCHER NUMBER
	CONTRACT NUMBER AND DATE	PAID BY [illegible]
	REQUISITION NUMBER AND DATE	

PAYEE'S NAME AND ADDRESS

Prudential Steamship Company, Inc.
c/o Mr. E. Cotter - Room 601
Charrier, McAteer & Fettig
1776 K Street, N. W.
Washington, D.C. 20006

A345

DATE INVOICE RECEIVED

DISCOUNT TERMS

PAYEE'S ACCOUNT NUMBER

SHIPPED FROM	TO	WEIGHT	GOVERNMENT B/L NUMBER

NUMBER AND DATE OF ORDER	DATE OF DELIVERY OR SERVICE	ARTICLES OR SERVICES (Enter description, item number of contract or Federal supply schedule, and other information deemed necessary)	QUANTITY	UNIT PRICE COST	UNIT PRICE PER	AMOUNT
		Amount due under Operating-Differential Subsidy Agreement Contra No. FMB-113 dated as of March 31, 1960 as amended to which the undersigned Operator is a party, covering voyages terminated during the period commencing April 1, 1960 and ending December 18, 1969 as supported by affidavit attached hereto. Payment by the Maritime Administration of all or part of the amount claimed herein shall not be construed as approval as to the correctness of the amount stated to have been expended, nor as a waiver of any right or remedy the Operator, or the Maritime Administration or Secretary of Commerce, acting by and through the Maritime Subsidy Board, or any predecessor or successor, may have had under the terms of said agreement or otherwise.				

(Use continuation sheet(s) if necessary)

(Payee must NOT use the space below)

TOTAL $42,540.77

PAYMENT:
☐ COMPLETE
☐ PARTIAL
☐ FINAL
☐ PROGRESS
☐ ADVANCE

DIFFERENCES

Amount verified; correct for

(Signature or initials)

MEMORANDUM

ACCOUNTING CLASSIFICATION (Appropriation symbol must be shown; other classification optional)

See attached

PAID BY	CHECK NUMBER PAYEE'S COPY	ON TREASURER OF THE UNITED STATES
	CHECK NUMBER	ON (Name of bank)
	CASH $	DATE

A346

PRUDENTIAL STEAMSHIP COMPANY, INC.

Attached to the Voucher in the Amount of $42,540.77 Covering Final Payment of Operating-Differential Subsidy for the Calendar Year 1965.

This payment is subject to audit review and approval of the accounting for the recapture period ending December 18, 1969, and to such adjustments as may be necessitated thereby; and that it is without prejudice to the Rights of either party with respect to the obligations of Prudential Steamship Company, Inc. for subsidy recapture.

PREPARED BY:
MARITIME ADMINISTRATION
OFFICE OF FINANCE
DIVISION OF EXTERNAL AUDITS AND FINANCIAL ANALYSIS
FEBRUARY 17, 1971

Standard Form No. 1034a
7 GAO 5000
1034-201

PUBLIC VOUCHER FOR PURCHASES AND SERVICES OTHER THAN PERSONAL

U.S. DEPARTMENT, BUREAU, OR ESTABLISHMENT AND LOCATION
Department of Commerce
Maritime Administration

DATE VOUCHER PREPARED: February 9, 1971

CONTRACT NUMBER AND DATE:

REQUISITION NUMBER AND DATE:

VOUCHER NUMBER:

PAID BY:

A34

PAYEE'S NAME AND ADDRESS
Prudential Steamship Company, Inc.
c/o Mr. E. Cotter - Room 601
Charrier, McAteer & Fettig
1776 K Street, N.W.
Washington, D.C. 20006

DATE INVOICE RECEIVED:

DISCOUNT TERMS:

PAYEE'S ACCOUNT NUMBER:

SHIPPED FROM: TO: WEIGHT:

GOVERNMENT B/L NUMBER:

NUMBER AND DATE OF ORDER	DATE OF DELIVERY OR SERVICE	ARTICLES OR SERVICES (Enter description, item number of contract or Federal supply schedule, and other information deemed necessary)	QUANTITY	UNIT PRICE COST	UNIT PRICE PER	AMOUNT
		Amount due under Operating-Differential Subsidy Agreement Contract No. FMB-113 dated as of March 31, 1960 as amended to which the undersigned Operator is a party, covering voyages terminated during the period commencing April 1, 1960 and ending December 18, 1969 as supported by affidavit attached hereto. Payment by the Maritime Administration of all or part of the amount claimed herein shall not be construed as approval as to the correctness of the amount stated to have been expended, nor as a waiver of any right or remedy the Operator or the Maritime Administration or Secretary of Commerce, acting by and through the Maritime Subsidy Board, or any predecessor or successor may have had under the terms of said agreement or otherwise.				

(Use continuation sheet(s) if necessary)

(Payee must NOT use the space below)

TOTAL $118,811.26

PAYMENT:
☐ COMPLETE
☐ PARTIAL
☐ FINAL
☐ PROGRESS
☐ ADVANCE

DIFFERENCES

Amount verified; correct for

(Signature or initials)

MEMORANDUM

ACCOUNTING CLASSIFICATION (Appropriation symbol must be shown, other classification optional)

See attached

PAID BY
CHECK NUMBER
ON TREASURER OF THE UNITED STATES
CHECK NUMBER
ON (Name of bank)
CASH
$
DATE

GPO 1963 OF — [illegible]

PRUDENTIAL STEAMSHIP COMPANY, INC.

A348

Attached to the Voucher in the Amount of $118,811.26 Covering Final Payment of Operating-Differential Subsidy for the Calendar Year 1966.

This payment is subject to audit review and approval of the accounting for the recapture period ending December 18, 1969, and to such adjustments as may be necessitated thereby; and that it is without prejudice to the Rights of either party with respect to the obligations of Prudential Steamship Company, Inc. for subsidy recapture.

PREPARED BY:
MARITIME ADMINISTRATION
OFFICE OF FINANCE
DIVISION OF EXTERNAL AUDITS AND FINANCIAL ANALYSIS
MARCH 1, 1971

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

MARSHALL P. SAFIR, Pro Se, and on
Behalf of the United States of
America,

Plaintiff,

-against-

AMERICAN EXPORT LINES
AMERICAN PRESIDENT LINES
LYKES BROS. STEAMSHIP CO., INC.
MOORE McCORMACK LINES, INCORPORATED
UNITED STATES LINES, INC.
FARRELL LINES, INC.
BLOOMFIELD STEAMSHIP CO.
PRUDENTIAL GRACE LINES, INC.
PRUDENTIAL STEAMSHIP CO., INC..

Defendants.

Docket No. 77-C-1093
(Dooling, J)

MARSHALL P. SAFIR,

Plaintiff,

-against-

ROBERT W. BLACKWELL, Assistant
Secretary of Commerce of the
United States of America,
and
JUANITA KREPS, Secretary of
Commerce of the United States
of America,
and
AMERICAN EXPORT LINES
AMERICAN PRESIDENT LINES
LYKES BROS. STEAMSHIP CO., INC.
MOORE McCORMACK LINES, INCORPORATED
UNITED STATES LINES, INC.
FARRELL LINES, INC.
BLOOMFIELD STEAMSHIP CO.
PRUDENTIAL GRACE LINES, INC.
PRUDENTIAL STEAMSHIP CO., INC.,

Defendants.

Docket No. 68-C-643
(Dooling, J)

AFFIDAVIT OF IRA O. LEWIS
IN SUPPORT OF MOTION TO
DISMISS OR, ALTERNATIVELY,
FOR SUMMARY JUDGMENT

STATE OF NEW YORK)
) SS:
COUNTY OF NEW YORK)

IRA O. LEWIS, being duly sworn, deposes and says:

1. I am employed by defendant Farrell Lines Incorporated as Senior Vice President-Finance. I have been employed in this capacity since May 1977. I was employed by Farrell Lines Incorporated as Vice President-Finance from June 1974 until May 1977, and as Vice President and Treasurer from April 1965 until June 1974.

2. As Senior Vice President-Finance of Farrell Lines Incorporated I am responsible for, among other things, directing and supervising the activities of the controller of Farrell Lines Incorporated with respect to the operating-differential subsidy contract of Farrell Lines Incorporated, including the billing and collection of such subsidy.

3. This affidavit is being submitted in support of the motion by defendants American President Lines, Ltd., Prudential Lines, Inc., Prudential Steamship Company, Inc. and Farrell Lines, Inc. ("the non-trade lines") to dismiss or, alternatively, for summary judgment.

4. The following statements are based upon my personal examination of records relating to operating-differential subsidies accruing to Farrell Lines Incorporated during calendar years 1965 and 1966, and are true to the best of my knowledge and belief.

(a) During calendar years 1965 and 1966, following each quarter, Farrell Lines Incorporated submitted vouchers to the Maritime Administration in which it claimed 90 percent of estimated operating-differential subsidies accruing to it in the preceding quarter.

(b) Following calendar years 1965 and 1966, Farrell Lines Incorporated prepared expense audits relating to its eligibility for operating-differential subsidies accruing in the preceding calendar year. These audits were submitted to the Maritime Administration, and were reviewed and checked by Maritime Administration auditors. Thereafter, upon the approval of the Maritime Administration auditors, Farrell Lines Incorporated submitted vouchers in which it claimed the difference between 95 percent of estimated operating-differential subsidies accruing to it in the preceding year and subsidy payments already made to it for such period.

(c) Final accountings for operating-differential subsidies accruing to Farrell Lines Incorporated during calendar years 1965 and 1966 were submitted to the Maritime Administration on May 29, 1970 and October 5, 1970, respectively. These final accountings were approved by the Maritime Administration on June 15, 1970 and October 10, 1970, respectively.

(d) Final vouchers for operating-differential subsidies accruing to Farrell Lines Incorporated during calendar years 1965 and 1966 were submitted to the Maritime Administration on May 29, 1970 and October 1, 1970, respectively. In these final vouchers, subsidies of $248,025.08 for calendar year 1965 and $918,297.04 for calendar year 1966 were claimed by Farrell Lines Incorporated.

(e) The final vouchers for calendar years 1965 and 1966 were stamped by the Maritime Administration as paid by on June 11, 1970 and October 20, 1970, respectively.

(f) Farrell Lines Incorporated received payment from the United States Treasury on the final vouchers for calendar years 1965 and 1966 on June 19, 1970 and February 16, 1971, respectively.

5. Annexed to this affidavit are true copies of the public vouchers sent to Farrell Lines Incorporated by the Maritime Administration upon its approval of the company's final vouchers for calendar years 1965 and 1966. A352

Ira Lewis

Ira O. Lewis

Subscribed and sworn to before me this

17 day of October, 1977.

Notary Public

Notary Public State of New York
No. 41-4651435 - Qualified in Queens County
Commission Expires March 30, 1979

Standard Form 1034-A
7 GAO 5000
1034-211

PUB VOUCHER FOR PURCHASES AND SERVICES OTHER THAN PERSONAL

VOUCHER NO.

SCHEDULE NO.

U.S. DEPARTMENT, BUREAU, OR ESTABLISHMENT AND LOCATION

Maritime Administration

DATE VOUCHER PREPARED: May 29, 1970

CONTRACT NUMBER AND DATE

REQUISITION NUMBER AND DATE

PAID BY

A353

5163 JUN 11 70

PAYEE'S NAME AND ADDRESS

Farrell Lines Incorporated
1101 Seventeenth St. N.W.
Washington, D.C. 20036

DATE INVOICE RECEIVED

DISCOUNT TERMS

PAYEE'S ACCOUNT NUMBER

SHIPPED FROM | TO | WEIGHT

GOVERNMENT B/L NUMBER

NUMBER AND DATE OF ORDER	DATE OF DELIVERY OR SERVICE	ARTICLES OR SERVICES (*Enter description, item number of contract or Federal supply schedule, and other information deemed necessary*)	QUANTITY	UNIT PRICE COST	UNIT PRICE PER	AMOUNT

Amount due under Operating-Differential Subsidy Agreement, Contract No. FMB-64, dated as of January 1, 1958, as amended, to which the undersigned is a party, covering voyages terminated during the period commencing January 1, 1960 and ending December 31, 1969, as supported by affidavit attached hereto. Payment by the Maritime Administration of all or part of the amount claimed herein shall not be construed as approval as to the correctness of the amount stated to have been expended, nor as a waiver of any right or remedy the Operator, or Maritime Administration, or Secretary of Commerce, acting by and through the Maritime Subsidy Board, or any predecessor or successor, may have under the terms of said Agreement or otherwise.

(Use continuation sheet(s) if necessary)

(Payee must NOT use the space below)

TOTAL $248,025.08

PAYMENT:
- ☐ COMPLETE
- ☐ PARTIAL
- ☐ FINAL
- ☐ PROGRESS
- ☐ ADVANCE

DIFFERENCES

Amount verified; correct for

(*Signature or initials*)

MEMORANDUM

ACCOUNTING CLASSIFICATION

PAYEE'S COPY

See attached

PAID BY

CHECK NUMBER | ON TREASURER OF THE UNITED STATES | CHECK NUMBER | ON (*Name of bank*)

CASH $ | DATE

74

B/L 5163

A354

FARRELL LINES INCORPORATED

Attached to the Voucher in the Amount of $248,025.08

Covering Final Payment of Operating-Differential Subsidy for the Calendar Year 1965

This payment is subject to audit review and approval of the accounting for the recapture period ending December 31, 1969, and to such adjustments as may be necessitated thereby; and it is without prejudice to the Rights of either party with respect to the obligations of Farrell Lines Incorporated for subsidy recapture.

Prepared By:
Maritime Administration
Office of Finance
Division of External Audits and Financial Analysis
June 17, 1970

Standard Form No. 1034a
~~G.A.O.~~
1034-209

PUBLIC VOUCHER FOR PURCHASES AND SERVICES OTHER THAN PERSONAL

U.S. DEPARTMENT, BUREAU, OR ESTABLISHMENT AND LOCATION: Maritime Administration

DATE VOUCHER PREPARED: October 1, 1970

VOUCHER NUMBER:

CONTRACT NUMBER AND DATE:

REQUISITION NUMBER AND DATE:

PAID BY: 01492 OCT 20 70

PAYEE'S NAME AND ADDRESS:

Farrell Lines Incorporated
1101 Seventeenth S.T. N.W.
Washington, D.C. 20036

A355

DATE INVOICE RECEIVED:

DISCOUNT TERMS:

PAYEE'S ACCOUNT NUMBER:

SHIPPED FROM: TO: WEIGHT:

GOVERNMENT B/L NUMBER:

NUMBER AND DATE OF ORDER	DATE OF DELIVERY OR SERVICE	ARTICLES OR SERVICES (*Enter description, item number of contract or Federal supply schedule, and other information deemed necessary*)	QUANTITY	UNIT PRICE COST	UNIT PRICE PER	AMOUNT
Amount due under Operating-Differential Subsidy Agreement, Contract No. FMB-64, dated as of January 1, 1958, as amended, to which the undersigned is a party, covering voyages terminated during the period commencing January 1, 1960 and ending December 31, 1969, as supported by affidavit attached hereto. Payment by the Maritime Administration of all or part of the amount claimed herein shall not be construed as approval as to the correctness of the amount stated to have been expended, nor as a waiver of any right or remedy the Operator, or Maritime Administration, or Secretary of Commerce, acting by and through the Maritime Subsidy Board, or any predecessor or successor, may have under the terms of said Agreement or otherwise.						

(Use continuation sheet(s) if necessary)

(Payee must NOT use the space below)

TOTAL $918,297.04

PAYMENT:

☐ COMPLETE
☐ PARTIAL
☐ FINAL
☐ PROGRESS
☐ ADVANCE

DIFFERENCES

Amount verified; correct for

(*Signature or initials*)

MEMORANDUM

ACCOUNTING CLASSIFICATION (*Appropriation symbol must be shown; other classification optional*)

1966 Final

See attached

PAID BY

CHECK NUMBER ON TREASURER OF THE UNITED STATES

PAYEE'S COPY

CHECK NUMBER ON (*Name of bank*)

CASH $ DATE

77

A356

FARRELL LINES INCORPORATED

Attached to the Voucher in the Amount of $918,297.04 Covering Final Payment of Operating-Differential Subsidy for the Calender Year 1966.

This payment is subject to audit review and approval of the accounting for the recapture period ending December 31, 1969, and to such adjustments as may be necessitated thereby; and that it is without prejudice to the Rights of either party with respect to the obligations of Farrell Lines Incorporated for subsidy recapture.

Prepared By:
Maritime Administration
Office of Finance
Division of External Audits and Financial Analysis
October 26, 1970

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

A357

MARSHALL P. SAFIR, Pro Se, and on
Behalf of the United States of
America,

Plaintiff,

-against-

AMERICAN EXPORT LINES
AMERICAN PRESIDENT LINES
LYKES BROS. STEAMSHIP CO., INC.
MOORE McCORMACK LINES, INCOPRORATED
UNITED STATES LINES, INC.
FARRELL LINES, INC.
BLOOMFIELD STEAMSHIP CO.
PRUDENTIAL GRACE LINES, INC.
PRUDENTIAL STEAMSHIP CO., INC.

Defendants.

Docket No. 77-C-1093
(Dooling, J)

MARSHALL P. SAFIR,

Plaintiff,

-against-

ROBERT W. BLACKWELL, Assistant
Secretary of Commerce of the
United States of America,
and
JUANITA KREPS, Secretary of
Commerce of the United States
of America,
and
AMERICAN EXPORT LINES
AMERICAN PRESIDENT LINES
LYKES BROS. STEAMSHIP CO., INC.
MOORE McCORMACK LINES, INCORPORATED
UNITED STATES LINES, INC.
FARRELL LINES, INC.
BLOOMFIELD STEAMSHIP CO.
PRUDENTIAL GRACE LINES, INC.
PRUDENTIAL STEAMSHIP CO., INC.

Defendants.

Docket No. 68-C-643
(Dooling, J)

AFFIDAVIT OF ROBERT T. BASSECHES,
IN SUPPORT OF MOTION TO DISMISS
OR, ALTERNATIVELY, FOR SUMMARY
JUDGMENT OF THE NON-TRADE LINES,
AMERICAN PRESIDENT LINES, LTD.,
FARRELL LINES, INC., PRUDENTIAL
LINES, INC., AND PSS STEAMSHIP
COMPANY, INC.

DISTRICT OF COLUMBIA) SS:

ROBERT T. BASSECHES, being duly sworn, deposes and says:

1. I am a member of the bar of the District of Columbia and of the law firm of Shea & Gardner. I have been among the counsel for the defendant non-trade lines since the outset of the agency proceedings known as MSB-S-243 and in the series of litigations in the United States District

Court for the District of Columbia under the caption *Safir* v. *Dent*, No. 74-1474; I have been of counsel for those same lines in the series of litigation in this Court docket under the caption *Safir* v. *Gulick*, No. 68 C 643; and I was among the counsel in the agency proceeding known as FMC Docket 65-13:

2. Exhibits 1 to 9 hereto represent true copies of the following pleadings, memoranda, orders, transcripts or letters in or relating to the proceedings identified in paragraph 1 hereof:

Exhibit 1 -- Letter of December 19, 1967 to the Maritime Subsidy Baord, Attention James Gulick, Acting Administrator.

Exhibit 2 -- Letter of January 13, 1969 to Hon. Alexander Trowbridge, Secretary of Commerce.

Exhibit 3 -- Letter of February 13, 1968 to Mr. James Gulick, Acting Administrator, Maritime Subsidy Board.

Exhibit 4 -- Transcript of Testimony of Marshall P. Safir, MSB Docket S-243, pages 6, 25-26, 61-62.

Exhibit 5 -- Motion and Affidavit and Brief of April 23, 1973 of Marshall P. Safir To The United States Court of Appeals For The Second Circuit, *Safir* v. *Gibson*, No. 33389/90/91.

Exhibit 6 -- Order of May 16, 1973 of United States Court of Appeals For the Second Circuit, *Safir* v. *Gibson*.

Exhibit 7 -- Order of September 9, 1974 of the Secretary of Commerce, MSB Docket S-243.

Exhibit 8 -- Order of May 9, 1974, of the United States District Court for the District of Columbia, *Safir* v. *Dent*, No. 2156-73

Exhibit 9 -- Order of October 21, 1975 of the United States District Court for the District of Columbia, *Safir* v. *Dent*, No. 74-1474

3. Exhibits 10-11 hereto represent true excerpts of the following congressional hearings:

Exhibit 10 -- Hearings Before the Subcommittee on Federal Procurement and Regulation of the Joint Economic Committee, 89th Congress, pages 106-118, 619, 626-628.

Exhibit 11 -- Hearings Before the Merchant Marine Subcommittee of the Senate Commerce Committee on S.981, 1220, 1223, 92d Congress, pages 32-34, 41-45.

4. Among the witnesses testifying in the proceeding known as FMC Docket 65-13 were: several officials of the Department of Defense, including the Commander of the Military Sea Transportation Service; the Traffic Manager for the Department of State; the Traffic Managing Specialist of the General Services Administration; and an official in the Office of Program Planning, Maritime Administration.

Robert T. Basseches

Subscribed and sworn to before me
this 17th day of October, 1977

Susanne C. Brooks
Notary

My Commission expires: 9-14-80

EXHIBIT 1

RABBINO & RABBINO
COUNSELORS AT LAW

331 MADISON AVENUE
NEW YORK, N. Y. 10017

LESTER RABBINO
MAURICE L. RABBINO
ABNER J. RABBINO
MITCHELL W. RABBINO

(212) 682-4802

A360

RECEIVED
'67 DEC 26 PM 2:29
SECRETARY
MARITIME ADMINISTRATION
MARITIME SUBSIDY BOARD
WASHINGTON

December 19, 1967

Maritime Subsidy Board
Federal Maritime Administration
Washington, D.C.

Attention: James Gulick, Acting Administrator

Dear Mr. Gulick:

On the basis of the Federal Maritime Commission's determination in Docket No. 65-13 dated December 12, 1967 that the certain contractors who are recipients of operating-differential subsidies, acting in concert, through AGAFBO, agreed to "rates, which were reduced to an admittedly noncompensatory and unreasonable level in an attempt unfairly to compete with Sapphire /which/ were so unreasonably low as to be detrimental to the commerce of the United States contrary to the provisions of section 18 (b) (5)", and further that "AGAFBO, by reducing its rates to an admittedly noncompensatory and unreasonable level in an attempt unfairly to compete with Sapphire, violated section 15 by knowingly setting rates which were contrary to section 18(b) (5) and which were detrimental to commerce and contrary to the public interest," demand is hereby made by and on behalf of Sapphire Steamship Lines, Inc., Pioneer Overseas Services Corporation, Liberty-Pac International Corporation, Marshall P. Safir, individually and Arnold Weissberger, individually, that the Maritime Subsidy Board immediately implement that provision of Title 46 USCA, section 1227 which provides:

> "No payment or subsidy of any kind shall be paid directly or indirectly out of funds of the United States or any agency of the United States to any contractor or charterer who shall violate this section."

and, 1. Forthwith cease and desist from making payments and subsidies of any kind to any contractor and 2. Move to recover all operating-differential and construction-differential payments and subsidies made from March 29, 1965 to date to any such contractors.

Maritime Subsidy Board December 19, 1967

Failure By The Board to cease such payments and to take such other and further steps as may be necessary will require the filing of appropriate proceedings by Sapphire, Liberty-Pac, Pioneer, Safir and Weissberger to require such action.

Very truly yours,

Mitchell Rabbino

Mitchell W. Rabbino

Joseph L. Alioto
Maxwell M. Blecher

By:

MWR:j

cc: Hon. Ramsey Clark,
Atty. General,
Carl Davis, Esq.
American Export Isbrandtsen Lines, Inc.
American President Lines, Ltd.
Bloomfield Steamship Company
Lykes Bros. Steamship Company, Inc.
Moore-McCormack Lines, Inc.
United States Lines Company

EXHIBIT 2

A362

RABBINO & RABBINO
COUNSELORS AT LAW

LESTER RABBINO
MAURICE L. RABBINO
ABNER J. RABBINO
MITCHELL W. RABBINO

331 MADISON AVENUE
NEW YORK, N. Y. 10017

(212) 682-4802

January 13, 1968

CERTIFIED - RETURN RECEIPT REQUEST

#131004

Hon. Alexander Trowbridge
Secretary of Commerce
Washington, D.C.

Honorable Sir:

We have noted with great interest an article in The Wall Street Journal, Thursday, January 11, 1968, concerning the request by Lykes Bros. Steamship Co. to borrow subsidy funds earmarked for its fleet replacement and to use them for a corporate diversification program. This request has already been rejected summarily by the Maritime Subsidy Board.

As you are doubtless aware, the Federal Maritime Commission, in Docket 65-13, recently held unanimously that the Atlantic & Gulf American Flag Berth Operators, of which Lykes is a member, violated the provisions of the Merchant Marine Act, 1936, by unlawfully combining to reduce rates to a noncompensatory level in an attempt to eliminate Sapphire Steamship Lines, Inc. from the trade. As a result of this finding, we have written to the Maritime Subsidy Board on behalf of Sapphire Steamship Lines, Inc., Pioneer Overseas Services Corp., Liberty-Pac International Corp., Marshall P. Safir, individually and Arnold Weissberger, individually. Our letter requested that future subsidy payments be withheld from the subsidized steamship companies and that subsidy payments previously made be recouped in accordance with the provisions of the Merchant Marine Act, 1936, Title 46, U.S.C.A. § 1227. A copy of this letter is attached hereto for your convenience.

We believe that no determination can be made regarding the present petition of Lykes Bros. Steamship Co. until the above mentioned matter has been determined by the Maritime Subsidy Board or the Courts. We therefore urge, on behalf of our clients, that you (1) deny the Lykes petition, the granting of which would seem

A363

contrary to the letter and intent of the subsidy provisions, and (2) provide instead that reserve funds be established by the subsidized steamship lines which are members of AGAFBO to assure that moneys will be available to the Government in repayment of subsidies disbursed to these companies from the date of violation.

Very truly yours,

RABBINO & RABBINO

MWR:jw

By

Mitchell W. Rabbino

RABBINO & RABBINO
COUNSELORS AT LAW

[illegible]
[illegible]
[illegible]
[illegible]

EXHIBIT 3

331 MADISON AVENUE
NEW YORK, N. Y. 10017

(212) 682 4802

A364

February 13, 1968

CERTIFIED

Mr. James Gulick
Acting Administrator
Maritime Subsidy Board
Maritime Administration
Washington, D.C.

Dear Mr. Gulick:

Your attention is respectfully invited to our letters of December 19, 1967 and December 21, 1967 to you (copies as indicated) and your response dated December 27, 1967.

As you no doubt know the time for appeal from the Federal Maritime Commission's decision in Docket No. 65-13 has now run and no appeal has been taken.

We trust that the possibility of appeal was one of the factors precluding a reply of a more substantive nature. We are most hopeful that, in light of this development, we may hear from you at the earliest practicable time.

Very truly yours,

Mitchell W. Rabbino

Mitchell W. Rabbino

Joseph L. Alioto
Maxwell M. Blecher

By: Maxwell M. Blecher

MWR:jw
cc: Hon. Ramsey Clark,
Atty. General
Carl Davis, Esq.
American Export Isbrandtsen Lines, Inc.
American President Lines, Ltd.
Bloomfield Steamship Company
Lykes Bros. Steamship Company, Inc.
Moore-McCormack Lines, Inc.
United States Lines Company

EXHIBIT 4

cfm-d

CHIEF HEARING EXAMINER PFEIFFER: Apparently not. I think that before we proceed with the taking of testimony we should probably have an understanding as to the ground rules.

A365

As I understand it, Mr. Safir, you contacted me last week and indicated that you would not be available tomorrow, is that right?

MR. SAFIR: Yes, sir.

CHIEF HEARING EXAMINER PFEIFFER: And I think that you also indicated that you would not be filing any documents on the 11th as had been scheduled because you were relying upon the wording of the FMC decision in Docket 6513, is that right?

MR. SAFIR: Yes, sir.

CHIEF HEARING EXAMINER PFEIFFER: All right. Now I would suggest that, if it is agreeable with Counsel, that the way we ought to proceed is something like as follows. I think that Mr. Safir should take the stand and give an opening statement if he so desires, and then be interrogated by Mr. McMorrow as Public Counsel to develop the record. Then we could proceed with cross examination.

Is that agreeable to the parties or do we have any other suggestions? Apparentely we have unanimity -- no?

MR. FORT: Mr. Examiner, I'm a little confused by the procedure. I heard about the position that Mr. Safir was

A366

Baltimore, which was there primarily for the solicitation of cargo.

We had an agent in Norfolk, Virginia, for the solicitation of commercial and Governmental cargo. And we had agents in Europe as well, who were soliciting and booking cargo on those vessels.

Q Was any advertising undertaken by the company to attract business?

A At all times the company had its sailing schedule in the Journal of Commerce. We had our own box there from the day we started until the day we finished.

And the vessels were on the most part, as it turned out, on a bi-weekly service out of the North Atlantic ports later on. We started earlier with a service out of the Gulf and then discontinued it after a few voyages. But at all times every sailing was advertised and cargo solicited for it.

Q The tariffs that you have mentioned, did they also cover the Gulf?

A Yes. The tariffs covered the Gulf as well.

Q You have just mentioned a frequency of sailings; would you please indicate if those were both in the North Atlantic and the Gulf, what your original frequency of sailings were, and as they changed, what did they change to?

A I think all of this, Mr. McMorrow, is a matter of record in 6513, and I would prefer not to use my memory. But it's all there as to what the service was and I would rather not reopen it. As the Court said, "It would be unseemly to re-investigate all this."

MR. JACOBI: I don't think we're trying to re-investigate. We're just trying to find out what the facts are in relation to your operation during the appropiate period. I think we're entitled to that.

THE WITNESS: I think that the 6513 makes good reading, and it would be more accurate than my memory at the present time.

MR. JACOBI: Could you point it out to me in that document?

THE WITNESS: Well, we haven't put the document into evidence as of yet.

CHIEF HEARING EXAMINER PFEIFFER: Well, it's in the docket.

THE WITNESS: Thank you. I see on page three, first of all, of the findings, a finding of the Commission that Sapphire Steamship Lines, Incorporated, operates a liner service between the United States North Atlantic ports, and ports in the United Kingdom and the Bordeaux-Hamburg Range. The liner service incorporates something more than just a common carrier by water.

I would say that would ordinarily close out the issue. However, to get back to your question -- well, lets go mp-d

A368

Q Talking more about the Gulf, about when did you discontinue service from the Gulf?

A I don't recall. It was sometime about the fall of '65, I think.

Q And between March 29, '65, and the fall when you discontinued service, do you have any idea about how many sailings you had from the Gulf?

A No, there were several, but I don't recall. There may have been four or five.

Q About in that range, but you're not sure?

A Not sure, maybe more, maybe more, but the record will show it.

Q What record would show it?

A 6513.

Q You are certain that the record in 6513 shows your sailings from the Gulf?

A Yes.

MR. WILLIAMS: Mr. Examiner, I would like to interject again. I am absolutely certain that the record in 6513 does not go past September 1965.

MR. SALZMAN: Mr. Safir has said that he had no sailings from the Gulf after September '65.

THE WITNESS: Thank you, Mr. Salzman.

BY MRS. SCUPI:

Q Do you intend in this proceeding to introduce any evidence from that docket that would establish the number of sailings that you had from the Gulf?

A No, Mrs. Scupi, I don't consider it necessary, unless Mr. Pfeiffer believes otherwise, but I think that the record is clear, the findings are clear, the common carrier status of Sapphire Lines was established in 6513.

The statement of it being a liner service, as a finding of the Commission, should be enough. If we are going to get into esoteric evaluations as to what extent of common carriage, and how many months during the period of the violation within any given area, I must confess that I -- my memory doesn't serve me that well any longer, but the records themselves, 7,000 pages of them should refresh everybody's mind.

Q You are relying on the FMC decision with respect to common carrier service in 6513?

A Yes, primarily. If there is anything else that comes up that I can help with, that you might ask, I would be glad to firm up the case further.

Q Do you recall, at this time, what the schedules were of the four or five, or perhaps, more sailings that you had from the Gulf?

A No, except that they included -- almost all of them included calls on the east coast of the United States, usually, either Baltimore or Norfolk or New York, prior to the North Atlantic leg.

EXHIBIT 5

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

MARSHALL P. SAFIR,
Apellant,
-against-
GIBSON-STANS, et al.,
Appellees.

DOCKET NO.
33389/90/91
MOTION

A 370

In accordance with rule 27(B) of the Federal Rules of Appellate Procedure and on the Affidavit, Brief and Exhibits herein submitted appellant moves this Court (Judges Friendly, Kaufman and Waterman) reverse and set aside all of Conclusion #2-A thru F (pp. 69 & 70) of the MA/MSB decision and order in its Docket S-243 and remand same with directions to:

1.) Recover all operating differential subsidies, as defined in the ODS agreements with the carriers, under Title VI of the Merchant Marine Act of 1936 paid to the violators of Sec. 810 thereof and allocable to the 11 month period of violation without restriction to the types of vessels, trade routes, ports, directions of carriage, or vessel to vessel departure dates.

2.) Stay the agencies attempt to waiver all other subsidy recovery as may be required under Title V and Title VII of the act as well as other types of subsidy both direct and indirect referred to in said order in S-243 pending the threshhold recovery of all the ODS payments made during the 11 month period.

3.) And for such other relief as this court may deem appropriate.

Respectfully submitted,

Marshall P. Safir Pro Se

MARSHALL P. SAFIR.

[illegible]
Notary Public, State of New York
No. [illegible]
Qualified in Suffolk County
Commission Expires March 30, 1974

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

MARSHALL P. SAFIR,

Appellant,

-against-

GIBSON-STANS, et al.,

Appellees.

DOCKET NO.

33389/90/91

AFFIDAVIT
AND
BRIEF

A372

STATE OF NEW YORK)
) ss.:
County of Kings)

MARSHALL P. SAFIR, being duly sworn, deposes and says:

In accordance with the mandate of this Court in Docket No.33389/90/91 decided Sept. 26, 1969 the Maritime Administration/Maritime Subsidy Board has finally made a finding of violation of Sec. 810, MMA 1936 against all the subsidized steamship lines who were members of the AGAFBO conference (Exhibit A).

The MA/MSB has found that appellants "allegations are true" and has also made a "considered" decision to recover what it calls subsidies paid in the past.

To the extent of the finding of violation and the decision to recover (as mandated by this panel of the Court) appellant is grateful. Appellant also gives thanks that after four years of agency "consideration" that he is alive to question and Judge Friendly, Judge Kaufman and Judge Waterman are still here to decide whether the MA/MSB decision is on grounds consistent with the statute as interpreted in the opinion of this Court issued on Sept. 26, 1969.

In making this decision the MSB has stated (p. 60) that,

> "We have discretionary authority under the statute to determine whether and to what extent to recover ODS for past violations of Sec. 810 from Title VI contractors in order to implement the policies of the act".

To further these self bestowed powers the Board then proceeded to establish an irrelevant formula for the assessment of a fine which attempts to set the price for allowing subsidized carriers acting in concert to destroy an unsubsidized American ocean carrier.

In its decision and order, the Board is preoccupied with the mitigating effect of possible bad advice of counsel to the violators. Disenchantment with the advice of counsel seems to be a distinguishing characteristic of all parties in this case including appellant Pro se but it is "unseemly" for the Board itself to disregard the considered judgement of its own counsel the Solicitor General of the United States who in arguing before the Supreme Court for the pre-maturity of the grant of a petition for Certiorari in this case has stated (Exhibit B p.9).

> "By contrast, the penalty created by Sec. 810 is inflexible as it bars all subsidy payments for at least the period of violation."

The Board has now found a willful violation of Sec. 810-or more realistically was collaterally estopped by this Court from finding otherwise.[*1] In order to avoid its mandated responsibility it proceeded arbitrarily and capriciously to enlarge its discretion beyond the interpretation of the Solicitor General and the clear wording of the Court in its Sept. 26, 1969 decision.

Whether the Solicitor General had knowledge of the decision by the MA/MSB known as Docket A-17 and listed as #6SSR57(1965) (Exhibit C) this appellant does not know but he feels certain that if this Court knew of its existance it would not have included the footnote in its "Sequel" decision. (Exhibit B p.7). After the MSB established

---

*1 (432 F 2nd 137,142(1970) Cert denied 400 US 972) the victim's qualifications to the protection of Sec. 810 the entire investigation was an irrelevant re-litigation of the original FMC decision in Docket 65-13.

The decision in Docket A-17 should have bound the Administrative Law Judge and the Board to the conclusion that continuing as a party to and conforming to an agreement which is unjustly discriminatory or unfair to any other citizen of the United States is no mere technicality. (see Exhibit C pp. 64,65,66.) *2. Instead the decision in Docket A-17 was ignored while the Board bled every last ounce of discretionary time allowed by the footnote to delay the inevitable decision.

Once the act is invoked the Board's discretionary authority ceases and all payments of ODS, as defined in the agreements between the MA and the carriers, made during the 11 month period and singled out by the carriers as the only form of subsidy they recognize as recoverable- must be recovered.

The recovery of subsidy payments is ministerial and not subject to formula's based on any factors other than as defined under the ODS agreements between the government and the carriers.

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*2 Ironically the MA/MSB order in Docket A 17 was served in July 1965 during the height of the violation in this case. All the violators had fresh knowledge of their jeopardy but continued as parties and conformed.

By attempting to invoke sanctions against some carriers ("trade") while omitting sanctions against others ("non-trade") although it found all in violation, the Board acted contrary to the interpretation of the law by its own counsel the Solicitor General, contrary to its own precedent and caveat to all the carriers in Docket A-17 (#6SSR57) (1965) and in a manner inconsistent with the statute as interpreted by this Court.

A376

For purposes of simplification at the present time appellant prays that the Court consider only ODS as defined in the ODSA agreements with the carriers as subject to recovery under this motion. Other forms of subsidy both direct and indirect mentioned in the decision in S-243 should be subject to later review once the initial ODS amounts paid are recovered from the violators for the 11 month period

To further simplify the issue for justiceability appellant defers for the present the question of the Boards failure to in any way, promote the competitive interest of the victim or the question of appellant's rights under 31USC 231-232 to participate in the recovery.

Respectfully submitted,

MARSHALL P. SAFIR
Pro Se

ROBERT J. [illegible]
Notary Public, State of New York
No. [illegible]
Qualified in Suffolk County

CERTIFICATION

I hereby certify that I have this day served the foregoing documents upon all parties of record in this proceeding by mailing, postage prepaid, a copy to each party.

Dated at Brooklyn, N.Y. this the 27th day of April, 1973

ROBERT J. D[illegible]HNENHOFFER
Notary Public, State of New York
No. 52-5016556
Qualified in Suffolk County
Commission Expires March 30, 1974

UNITED STATES COURT OF APPEALS

EXHIBIT 6

Second Circuit

◆

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the 16th day of May, one thousand nine hundred and seventy three.

Marshall P. Safir, Arnold Weissberger and Sapphire Steamship Lines, Inc.,

Plaintiffs-Appellants,

v.

Andrew Gibson, Acting Maritime Administrator, Maritime Administration, United States Department of Commerce, James S. Dawson Jr., Secretary, Maritime Subsidiary Board, Maritime Administration, United States Department of Commerce, and Maurice Stans, Secretary of Commerce of the United States,

Defendants-Appellees.

It is hereby ordered that the motion made herein by/~~counsel for~~ Martin Safir, Esq.

appellant ~~appellee~~ ~~petitioner~~ ~~respondent~~

by notice of motion dated April 27, 1973, to recall the mandate; and to reverse and set aside Conclusions of the Maritime Administration and Maritime Subsidiary Board and remand to the United States District Court for the Eastern District of New York with directions

be and it hereby is ~~granted~~ denied.

~~[illegible]~~

Henry J. Friendly

Henry J. Friendly

Sterry R. Waterman

[illegible] R. [illegible] Circuit Judges

THE SECRETARY OF COMMERCE
Washington, D.C. 20230

EXHIBIT 7

ORDER

A379

In the Matter of: Maritime
Subsidy Board Docket No. S-243
Investigation of Alleged
Violations of Section 810 of
the Merchant Marine Act, 1936,
as amended.

The petitions of American Export Lines, Inc., Lykes Bros. Steamship Co., Inc., Moore-McCormack Lines, Inc., Bloomfield Steamship Co. and United States Lines for review of the Maritime Subsidy Board's decisions of April 9, 1973 and October 10, 1973 are hereby granted, solely with respect to the mitigating circumstances and appropriate sanctions to be imposed on the trade respondents. In all other respects, the petitions are denied. The petition for review of American President Lines, Ltd., Farrell Lines, Inc., Prudential-Grace Lines, Inc., and Prudential Steamship Company, Inc. is denied.

The record before me fully presents the contentions of the parties without need for further submissions or delay.

The record indicates that the United States Government actively induced the rate reductions here in issue, and received substantial financial benefit from such reductions. The record further supports the conclusion that, but for the active inducement of federal officials, rates found by the Federal Maritime Commission previously not to have been unreasonably high would not have been reduced to noncompensating levels by respondents.

Accordingly, having considered the total circumstances surrounding the rate reductions in question, it is my conclusion that recovery from each of the trade respondents in the October 10, 1973 Final Order on Recoveries shall be modified by reducing the total amount of subsidy subject to recovery to $1,126,522.26 to be apportioned in accordance with the table attached hereto.

A380

The adjustment here ordered is made to reflect the effect of the United States Government action, notwithstanding that the trade respondents shared in a greater or lesser individual degree in the improper conduct that has been determined to have occurred as charged in the petition to the Board.

SO ORDERED

(signed)

Secretary of Commerce

Date:

A381

TABLE

	Companies				
	AEL	Bloomfield	Lykes	Mormac	United States Lines
Total affected operating differential Subsidy paid during relevant period	$203,739.84	$750,551.12	$2,725,587.69	$ 968,091	$11,082,875
Percentage of Military Cargo to Freight Revenues	*23.77%	24.7%	27.99%	53.27%	17.5%
Portion of Operating Differential Subsidy related to Military Cargo	$ 48,428.83	$185,386.13	$ 762,891.99	$515,702.07	$ 1,949,168.53
Reduction of 50% due to Inducement of Government Officials	$ 24,214,43	$ 92,693.07	$ 381,446	$257,702.07	$ 974,584.27
Reduction due to Special Mitigating Circumstances	$ 18,160.82	$ 46,346.54	--------	$193,276.76	$ 487,292.14
Amount Subject to Recovery	$ 18,160.82	$ 46,346.54	$ 381,446	$193,276.76	$ 487,292.14

*The Maritime Subsidy Board has advised that the percentage expressing the relationship between total revenues and military cargos should be changed to this figure.

A382

TABLE

	Companies				
	AEL	Bloomfield	Lykes	Mormac	United States Lines
Total affected operating differential Subsidy paid during relevant period	$203,739.84	$750,551.12	$2,725,587.69	$ 968,091	$11,082,875
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*The Maritime Subsidy Board has advised that the percentage expressing the relationship between total revenues and military cargos should be changed to this figure.

United States Lines
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EXHIBIT 8

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

A383

MARSHALL P. SAFIR, Plaintiff, v. FREDERICK DENT, individually and as Secretary of Commerce et al., Defendant.	:	Civil No. 2156-73 FILED MAY 9 1974 JAMES F. DAVEY, CLERK

ORDER

Upon consideration of the several applicants' motions for intervention and the opposition thereto, the cross-motions for summary judgment by plaintiff and defendants, and the entire record herein, it appearing to the Court that it lacks subject matter jurisdiction over the instant action in that it is a premature, non-justiciable challenge to an interlocutory administrative order of the Maritime Subsidy Board of the Maritime Administration, which order has been stayed by the Secretary of Commerce pending his determination whether to elect to review it; it is accordingly this 9th day of May, 1974,

ORDERED that the applicants' motions for intervention be, and the same hereby are, denied; and it is

FURTHER ORDERED that plaintiff's complaint be, and the same hereby is, dismissed without prejudice.

JUDGE

EXHIBIT 9

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

A384
/

MARSHALL P. SAFIR,

Plaintiff,

v.

FREDERICK DENT, individually
and as Secretary of Commerce,

Defendant,

AMERICAN PRESIDENT LINES, LTD.,
et al.,

Intervening Defendants.

Civil Action No. 74-14

FILED
OCT 22 1975
JAMES F. DAVEY, Clerk

O R D E R

Plaintiff Marshall P. Safir, having moved for summary judgment, defendant Frederick Dent, and intervening defendants Trade Lines and Non-Trade Lines having replied to plaintiff's motion and cross-moved for summary judgment, the Court having considered the motions, memoranda of points and authorities of all parties, it is hereby

ORDERED that the plaintiff's motion for summary judgment is denied, that defendant's and intervening defendants' motions for summary judgment are granted and the complaint herein is dismissed with prejudice this 21st day of October, 1975.

JUDGE

EXHIBIT 10

DISCRIMINATORY OCEAN FREIGHT RATES AND THE BALANCE OF PAYMENTS

A385

HEARINGS

BEFORE THE

SUBCOMMITTEE ON FEDERAL PROCUREMENT AND REGULATION

OF THE

JOINT ECONOMIC COMMITTEE
CONGRESS OF THE UNITED STATES

EIGHTY-NINTH CONGRESS
FIRST SESSION

PART 1

APRIL 7 AND 8, 1965

Printed for the use of the Joint Economic Committee

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1965
45-063 O

For sale by the Superintendent of Documents, U.S. Government Printing Office
Washington, D.C., 20402 - Price $1.00

STATEMENT OF MARSHALL P. SAFIR ON BEHALF OF SAPPHIRE STEAMSHIP LINES, INC.; ACCOMPANIED BY GERALD M. ROBISON, THE PRESIDENT, AND STANLEY L. TEMKO, COUNSEL

Mr. SAFIR. On my right is the president of the Sapphire Steamship Lines, Gerald Robison, of Connecticut, and on my left is Mr. Stanley Temko of the law firm of Covington & Burling here in Washington.

Senator DOUGLAS. You may proceed.

Mr. SAFIR. Mr. Chairman and members of the committee: My name is Marshall P. Safir. I am the chairman of the board of directors of Sapphire Steamship Lines, Inc. Sapphire Lines is a recently formed American company, operating American flag ships in berth service. This service has already started between east coast U.S. ports and Europe, and will be extended later this month to include an additional service between gulf coast ports and Europe.

Although we are new to the shipping industry, from our knowledge of the inquiry which the subcommittee is conducting, we believe that the story of Sapphire Lines and and its experience to date will be of interest to you.

My business experience has not been in the ocean carrier field. For more than 20 years, however, I have been engaged as an executive in the moving, storage, and warehousing business, with considerable experience as an international mover. I am currently chairman of the board of the Weissberger group of moving and storage companies, which has been in business in New York for more than 80 years.

Let me at the outset tell you very succinctly why the Sapphire Steamship Lines was formed—it was simply the inability of moving companies to obtain a realistic trans-Atlantic Ocean rate for household goods from the member lines of AGAFBO. AGAFBO—the Atlantic and gulf American flag berth operators—is the association of U.S.-flag carriers established to deal with the MSTS for the carriage of Department of Defense cargo to and from Europe.

Senator DOUGLAS. In other words, this in a shipping conference?

Mr. SAFIR. This is a shipping conference which is organized for the purpose of dealing with the military transport service only.

One of these moving companies, Liberty Pac International Corp.—starting in September of 1964, proposed to the Department of Defense modifications in the DOD procedures for the carriage of household goods.

Senator DOUGLAS. What was the rate which the Department of Defense was paying prior to your negotiations with DOD?

Mr. SAFIR. The rate was 81 cents per cubic foot.

Senator DOUGLAS. What would that amount to per ton? Would that be $32.40?

Mr. SAFIR. $32.40.

Senator DOUGLAS. $32.40 for 40 cubic feet, a measurement ton.

You proposed to the Department of Defense modifications in the DOD procedures. What rates did you offer originally?

Mr. SAFIR. I think it can be best explained in my statement.

Senator DOUGLAS. I want to take you step by step.

Mr. SAFIR. We were offering a rate reduction of $2 per net hundredweight on the through bill of lading cost.

A386

Senator DOUGLAS.
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Senator DOUGLAS. $2 per hundredweight?

Mr. SAFIR. Yes, sir.

Senator DOUGLAS. I had always thought there were from 20 to 22.4 hundredweights in a ton?

Mr. SAFIR. I don't follow your point, Senator.

Senator DOUGLAS. You were offering $44.80 a ton.

Mr. TEMKO. Senator, I think this can be better understood if we differentiate between two stages. The stage that Mr. Safir is talking about now mainly was an offer of a moving company to the Department of Defense to lower the rate for the entire through Government bill of lading carriage, which is broader than just the ocean transportation segment.

In other words, this was a mover's offer to the Department of Defense to say that on each of the current rates then in effect, "We will lower the rate to the Department of Defense by $5 per hundredweight."

That is not just the ocean transportation.

Senator DOUGLAS. All right, go ahead.

Mr. TEMKO. Mr. Safir will get into the ocean transportation. But this starts off by saying, as we say here, that if the Army was paying, say, $30.60 per hundred pounds of military housing—military household goods, Liberty Pac offered to reduce that rate to $25.60.

In other words, it was $5 off each hundred pounds. I think this will come out.

Senator DOUGLAS. $5 on each hundred pounds would be $112 on a ton. Isn't that right?

Mr. SAFIR. That is right, sir.

Senator DOUGLAS. In other words, we are dealing with considerable amounts. Mr. Boggs has figures on household goods amounting to 583,000 tons in 1964. Millions of dollars are involved.

Mr. TEMKO. As Mr. Safir will say, conservatively for the 8 months of 1965 remaining, conservatively, there would be a saving to the Department of Defense of more than $5 million.

Senator DOUGLAS. All right.

Go ahead.

Mr. SAFIR. These proposals result in a saving to the Department of Defense of $5 per hundredweight of household goods. I wish to emphasize that amount—a $5 saving in the cost of moving each 100 pounds of military household goods going to most of Europe.

Senator DOUGLAS. That is $112 per metric ton?

Mr. SAFIR. Yes, sir.

In concrete terms, when a sergeant, for example, moves from Fort Meade, Md., to a post in Germany, the Government rate is reduced from $30.60 to $25.60 per hundred pounds.

The Liberty Pac proposal contemplated the utilization of certain reusable containers which would reduce handling costs and make possible other savings. It also contemplated a rate for the ocean carriage of military household goods which recognized, first, that such cargo was easy to handle, and, second, that such cargo moved in substantial amounts in both directions across the Atlantic and that it consequently should not be subject to an inflated rate based primarily on eastbound carriage.

Senator DOUGLAS. That is outbound?

Mr. SAFIR. Outbound and inbound.

Senator DOUGLAS. Did you say the inflated rate is based on the outbound carriage?

Mr. SAFIR. Yes. In other words, the homeward rate from Europe to the United States was the same as the outbound rate was.

Senator DOUGLAS. For the Government?

Mr. SAFIR. For the Government.

Senator DOUGLAS. Although generally not for private shippers?

Mr. SAFIR. On December 29, 1964, the Department of Defense approved the Liberty Pac proposal, stating that it could become effective April 1, 1965, as it has. Liberty Pac attempted to secure some downward revision in ocean freight rate but was unsuccessful in this effort.

Consequently, Sapphire Steamship Lines was organized to provide an American-flag berth service which would make available to Liberty Pac and all other movers of household goods a reasonable ocean freight rate.

One point so deserves emphasis here. While the impetus for the organization of the line was as I have stated, Sapphire Lines is not in business solely as an ocean carrier of household goods. Staffed by experienced steamship men, we are engaged in a regular berth service to carry—in either direction across the Atlantic—all commodities, for commercial shippers, for the Department of Defense, and for any other governmental organization.

We already have on file with the Federal Maritime Commission a rate for household goods which will result in savings to the Department of Defense during the year 1965—and I believe this is conservative—of more than $5 million. We also have on file effective for MSTS cargo—including a basic rate of 40 cents per cubic foot. This rate is 14½ cents lower than the AGAFBO rate for general cargo and represents an even greater savings over some of the other AGAFBO rates.

Senator DOUGLAS. Do I understand that the AGAFBO ships are also subsidized ships?

Mr. SAFIR. For the most part.

Senator DOUGLAS. But you are not a subsidized line?

Mr. SAFIR. No, sir.

Senator DOUGLAS. So you are not subsidized and you are charging a much lower rate than the AGAFBO ships which receive a subsidy in addition?

Mr. SAFIR. Yes, sir.

Senator DOUGLAS. This is very important. Thank you.

Mr. SAFIR. We have already booked MSTS cargo for our next eastbound sailing at our 40-cent rate, and each cubic foot so booked represents a saving to the Government of 14½ cents or more.

We believe these rates are realistic. On a proper utilization of ship capacity, well they will enable Sapphire Lines to make money—not an exorbitant profit, but a profit.

Senator DOUGLAS. I have to go to the floor, but I will stretch the time as much as I can.

Go ahead.

Mr. SAFIR. As I have said, Sapphire Lines has very recently begun operations. It may well be that its operation will serve to furnish this subcommittee, as well as the DOD and the MSTS and other interested Government agencies, with valuable data.

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Its operating experience may well be useful in the consideration of some of the questions which have been of interest to the Joint Economic Committee, as well as other Government groups, and which are still unresolved. In this I refer to the reasonableness of the rates charged the Government in the ocean shipping field, as well as to some of the practices which have been followed in this field.

We are satisfied we can take care of ourselves in any fair contest. Sapphire Lines is a soundly conceived, viable operation which we expect will prosper as a commercial organization while charging reasonable rates to the shipping public and to the Government.

A matter of immediate interest to Sapphire Lines is the level of rates charged by the AGAFBO lines for the ocean carriage of MSTS cargo. The recent report of this committee pointed out that an MSTS comparison of MSTS rates with those available to commercial shippers showed that in many instances the MSTS paid higher rates.

The report also referred to the "extraordinarily high level of rates" for MSTS cargo. These high rates concern Sapphire Lines because they can be used in an attempt to exclude new companies, such as Sapphire Lines, from this area.

AGAFBO's members can, with little loss in overall profit, selectively reduce some MSTS rates to an extremely low level, while maintaining others at their high levels, in an effort to drive non-AGAFBO members out of business. These low, "fighting rates" are subsidized by the large profit reflected in the present high rates.

There is no doubt of the economic power of AGAFBO's members to utilize such "fighting rates." Moreover, there is some indication that AGAFBO may have actually resorted to this technique in the case of Sapphire Lines. I refer to the recent action of AGAFBO reducing, effective March 29, 1965 from 58½ to 23 cents per cubic foot its MSTS rate for household goods while its MSTS general cargo rate was maintained at its prior high level.

Senator DOUGLAS. They cut from 58½ to 23 cents after you had made your offer?

Mr. SAFIR. Yes, sir.

Senator DOUGLAS. Had they been seeking an increase before you made your offer?

Mr. SAFIR. Yes, sir.

Senator DOUGLAS. They had been seeking an increase before you made your offer?

Mr. SAFIR. Yes, sir.

Senator DOUGLAS. They had been seeking an increase before you made your offer. After you made your offer, they reduced from 58½ cents to 23 cents per cubic foot?

Mr. SAFIR. Yes, sir. Only on the commodity which represented the heart of my ability to operate.

Senator DOUGLAS. In other words selective price cutting on the products where you were offering competition?

Mr. SAFIR. That is correct. As noted above, Sapphire Lines' MSTS rate for general cargo is 40 cents. It is interesting that this new 23-cent rate was stated by AGAFBO in its filing with the Maritime Commission to be effective only until April 30, 1965, that is about 1 month, at which time it will jump back to the 58½ cent level.

Senator Douglas. In other words, they lowered this rate to take the business away from you?

Mr. Safir. Yes, sir.

Senator Douglas. Were they awarded the contract?

Mr. Safir. This is matter of a tender to the Government.

Senator Douglas. Has the Government accepted the offer?

Mr. Safir. We don't know.

Senator Douglas. Can we find out if the Government accepted the 23-cent rate?

Mr. Boggs. I don't think there has been a decision.

Mr. Safir. It is just then filed. I would imagine since it is filed in the usual manner, it is an effective rate. It is a tariff rate.

Senator Douglas. Is a representative from Admiral Harllee's commission in the room?

Mr. Mazure. Yes, sir: I am James E. Mazure, special assistant to the chairman, Federal Maritime Commission.

Senator Douglas. Have you accepted that rate?

Mr. Mazure. As far as I know it is on file.

Senator Douglas. And, therefore, the Department of Defense will grant the contract?

Mr. Mazure. I don't know about the latter part. I can find out about the filing.

Senator Douglas. Will you do so immediately?

Mr. Mazure. Yes, sir.

Mr. Safir. I question whether this temporary 23-cent rate was not motivated by AGAFBO's desire to get rid of a serious competitive factor—I refer, of course, to Sapphire Lines.

I wish to thank the committee for the opportunity of appearing before it and to say that I share its interest in the areas under inquiry, for many years as a private citizen and now as the head of Sapphire Steamship Lines.

Senator Douglas. I want to thank you for coming to testify, Mr. Safir. I am going to ask a series of questions of you. We will start with simple ones.

Do you believe that the current rates charged by American berth operators on Defense Department cargoes are exorbitantly high in relation to the subsidized carrier costs and in relation to the unsubsidized carrier costs?

Mr. Safir. I will answer this in two ways, sir. The answer to the first part is "Yes." The answer to the second and that is the unsubsidized, I am not certain about at all.

I do feel, however, that since AGAFBO represents both the subsidized and unsubsidized lines the subsidized lines are hiding behind the skirts of the unsubsidized.

Senator Douglas. You are an unsubsidized line and you offered to carry Defense cargoes at a lower rate than the subsidized lines?

Mr. Safir. Yes, sir. And we feel that we can make a profit even at this rate.

Senator Douglas. Why do you think the rates charged by the conference berth operators are so high?

Mr. Safir. I can't answer that.

Senator Douglas. Have you made an estimate of how much money you think the Treasury would save if these rates were adjusted to "a fair and reasonable basis"?

A390

Mr. Safir. No, sir.
Senator Douglas. Have
the Defense Department tried
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Mr. Safir. Yes.
Senator Douglas. The answ
Mr. Safir. Yes.
Senator Douglas. I want
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Mr. Safir. No, sir.

Senator Douglas. Have members of the conference dealing with the Defense Department tried to place obstacles toward your becoming a steamship operator?

Mr. Safir. Yes.

Senator Douglas. The answer is yes?

Mr. Safir. Yes.

Senator Douglas. I want to say that these statements are being given in response to questioning and you are answering very frankly.

If you would prefer to answer the questions under oath, I will be very glad to have you do so.

I won't require it. But if you would prefer to have it under oath, you may.

We don't question your integrity at all, Mr. Safir. I was really wondering whether we would give you more adequate protection if you spoke under oath. Whatever you say, however, is privileged and not subject to the law of libel.

Mr. Safir. Thank you.

Senator Douglas. In response to the question "have the members of the conference dealing with the Defense Department tried to place obstacles toward your becoming a steamship operator," your answer is "Yes"?

Mr. Safir. That is correct.

Senator Douglas. Would you elaborate on that?

Mr. Safir. I have a prepared statement in connection with that, sir.

A problem we have run into is the sniping and interference with our undertaking by some of the lines which have been entrenched in this trade. Obviously, we did not expect the companies which are in the AGAFBO group to look with joy upon our entrance into this business.

We also know that any new competitor in any business faces a hard row. It seems to us, however, that some of the things which we have experienced in the past few months go a good deal beyond this. We have, for example, been told by an AGAFBO line employee who stated that he spoke for AGAFBO, that AGAFBO would negotiate dual rates with all movers so that no household goods would move on Sapphire Lines.

He also told us that AGAFBO and its member lines would go to the Department of Defense and do everything possible to smear us, and "smear" was his word. And that if nothing else succeeded the AGAFBO lines would finally quote lower rates than Sapphire and would go right to the bottom if necessary. We have also received indications——

Senator Douglas. They would do this as a group?

Mr. Safir. As a group.

We have also received indications from stevedoring concerns that representatives of at least some of AGAFBO's lines have urged them not to do business with Sapphire.

Beyond this, we have also received reports that some AGAFBO lines have told movers of household goods that those movers who shipped on Sapphire Lines might well run into difficulties in areas of the world served by AGAFBO members but not served by AGAFBO lines.

Senator DOUGLAS. Did they mention what those difficulties were?

Mr. SAFIR. Is it possible for Mr. Robison, the president of the company, to answer that?

Senator DOUGLAS. Yes.

Mr. ROBISON. Mr. Chairman, those difficulties, as they have been understood by us, relate to operational difficulties that might be encountered by movers of household goods who do business with the Department of Defense in just getting shipments moved from point to point in areas which Sapphire Lines does not serve. For example, space might not be available on vessels, extraordinarily slow handling might be experienced, and other similar operational difficulties which would just make it difficult.

Senator DOUGLAS. Any threat of violence?

Mr. ROBISON. No, sir: not to my knowledge.

Do you mean personal violence?

Senator DOUGLAS. They are just not going to give you any service.

Mr. ROBISON. Yes, sir.

Mr. SAFIR. That completes the statement, sir.

Senator DOUGLAS. Would you identify for the record the name of the representative of AGAFBO who made these statements to you? Remember, you are not volunteering this testimony. You are responding to a question coming from the U.S. Senate.

Mr. SAFIR. The name of the man was Robert Watt.

Senator DOUGLAS. W-a-t-t?

Mr. SAFIR. Yes.

Senator DOUGLAS. By whom is he employed?

Mr. SAFIR. He is employed by the Waterman Steamship Co.

Senator DOUGLAS. But he said he was speaking for others?

Mr. SAFIR. He said he was speaking for AGAFBO.

Senator DOUGLAS. Have any representatives of the conference or any of your potential competitors threatened shippers who use your ships, or other potential customers of yours or other persons with retaliatory actions if your ships were to be used?

Mr. SAFIR. This can best be explained in this manner, Senator Douglas. We have had relationships with several shippers of household goods, movers, through a traffic management service that we had been performing prior to entry into the steamship field.

I can answer this question in this way only: We had seven such clients, including Liberty-Pac, which was the one that was mentioned originally; as of today we have two left.

Senator DOUGLAS. Do you have any evidence as to why the other five discontinued?

Mr. SAFIR. No, sir.

Senator DOUGLAS. Did they tell you why?

Mr. SAFIR. Yes. In some cases it was poor service. In some cases it was for nonpayment of their invoices. In some cases it was slow movement of the cargo. And all of which seem to have, and, in fact, have no basis in fact.

Senator DOUGLAS. You can prove that these have no basis in fact?

Mr. SAFIR. Yes, sir.

A392

Senator DOUGLAS. Have
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Mr. SAFIR. I don't know.
Senator DOUGLAS. What
Mr. SAFIR. Well, what is
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Senator DOUGLAS. Have members of the conference attempted to have your credit sources cut off?

Mr. SAFIR. I don't know.

Senator DOUGLAS. What do you think about it?

Mr. SAFIR. Well, what is on the record is best to talk about. There had been a change in AGAFBO's rules effective around late December of this year, when the intentions of Liberty-Pac became known, that they wanted a lower rate for the new container mode. There was a section 15 agreement filed by AGAFBO which changed the credit terms for household carriers.

It required that each carrier either post a $100,000 bond with AGAFBO, or that credit would be limited to 15 days thereafter, and if there was no payment in 15 days then the carrier would go on to a c.o.d. order, rather, a cash basis, to pick up his shipments.

This was a complete reversal. We had always owed the AGAFBO members a considerable amount of money. The nature of the business, with a 3-month situation between the time we originate the removal in Dusseldorf, Germany, and the time it is delivered in Des Moines, Iowa, plus the time it takes for the Army Finance Office to pay us, represents a considerable outlay of cash. To collapse the credit——

Senator DOUGLAS. And in the past they had always been letting you have 3 months?

Mr. SAFIR. Letting us have a very substantial credit line, a very generous credit line.

The move toward this new approach took place coincidentally with the emergence of the idea of Liberty-Pac first chartering its own ships and then later on establishing the Sapphire Line.

We have found since that time that under no circumstances can we ever get current enough so that we are off a cash basis. One of the main reasons that most of our clients have left us is the fact that they have been badgered by lawyer's letters from AGAFBO members, saying that the traffic management services was not paying the bills on time, impugning our integrity wherever they could, and creating such a distateful atmosphere that it is not inconceivable that a good customer could sour on such an organization that was in such conflict with such a powerful group.

Senator DOUGLAS. Have your telephones been tapped?

Mr. SAFIR. I don't know, sir. I cannot prove that that is the case.

Senator DOUGLAS. Do you think it is?

Mr. TEMKO. I really think he does not know, and I really don't think it helps, sir, to surmise on it.

Senator DOUGLAS. Has AGAFBO invited you to join the conference and make peace with it?

Mr. SAFIR. Through no official means, sir.

Senator DOUGLAS. Through no official means?

Obviously, they seem to be using a stick. Has any carrot been held out to you?

Mr. SAFIR. No, sir.

Senator DOUGLAS. I am sure no literal carrot.

Mr. SAFIR. No, sir.

Senator DOUGLAS. You say through no official means. Have there been unofficial approaches?

A394

Mr. Safir. A suggestion made of why don't we join AGAFBO.

Senator Douglas. Who made that suggestion?

Mr. Safir. It was made by a party by the name of Walsh, Ed Walsh, to Arnold Weisburger, who is the vice chairman of the board.

Senator Douglas. Whom does he represent?

Mr. Safir. Mr. Walsh? At the moment it is hard to say.

Senator Douglas. By whom was he employed?

Mr. Safir. He was formerly with the States-Isthmian Lines, and I don't know whether he is now connected with any other company.

Senator Douglas. Let me see if I correctly understand the situation. You offered a lower rate than the approved AGAFBO rate on household goods, and you did this at a time when AGAFBO was seeking an increase. Is that correct?

Mr. Safir. Yes, sir.

Senator Douglas. Your lower rate was $25.60 per hundred pounds, and immediately following your offer AGAFBO reduced its rate on household goods from 58½ cents to 23 cents per cubic foot?

Mr. Safir. Yes, sir. This was the rate to MSTS.

Senator Douglas. And prior to that time they had been trying to get a higher rate?

Mr. Safir. That is my understanding.

Senator Douglas. You quote your rates in two forms: First, the $25.60 per hundred pounds for household goods, and 40 cents per cubic foot for general cargo?

Mr. Safir. I think that requires some explanation, sir.

There are two factors involved in this through bill of lading business. That is the overall rate which includes the terminal service cost of packing the man's dishes and glassware in his home, the transportation to a rail head, moving to the port of exit and then ocean freight and then additional inland and unpacking cost at the residence. So the rate is all inclusive at $30, let's say.

The ocean portion of that rate in the past averaged out to approximately $13 a hundred pounds of the $30-odd.

What we have done is reduced that rate to the mover, the Sapphire Lines, from the $13 approximation, which is represented on a conversion to 81 cents a cubic foot, down to $7 per 100 pounds or 45½ cents a cubic foot, approximately.

That is on household goods alone.

Senator Douglas. Let me make this clear. You propose to effectively cut the rates in half, is that right?

Mr. Safir. Almost. Not quite, but almost.

Senator Douglas. Not quite but almost half?

Mr. Safir. Almost.

Senator Douglas. And still make a profit?

Mr. Safir. Yes, sir.

Senator Douglas. And then in reprisal for this, they came down below your figure, from 58½ cents which they had said was too low, to 23 cents?

Mr. Safir. There are two rates involved here, sir.

You have the 81 cent quotation which we mentioned a moment ago as being the former AGAFBO rate for through bill of lading services. You also have—because the Government does shipping that is not done on the through bill of lading but in its own in-house methods—a rate

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for household goods; there was a rate, of 58½ cents, which was higher than the general cargo rate.

Household goods was in the category of premium cargo. When AGAFBO reduced its rates from 81 cents, apparently to meet my competition for 30 days, they also felt impelled to level off the rate by giving the Government, for its own in-house method, a similar reduction.

So they reduced their 58½ cent rate down to what they have purported is a similar reduction, down to 23 cents from the 58½ cents.

Senator DOUGLAS. Did they have an 80-cent rate, too?

Mr. SAFIR. Eighty-one cents. That was berth terms.

Senator DOUGLAS. Did they reduce that?

Mr. SAFIR. To 45½ cents, berth terms. Also only for 30 days.

Senator DOUGLAS. And what had been your rate on what AGAFBO had charged 80 cents for?

Mr. SAFIR. We put it on a per-hundred-pound basis, but converted to cube it would be about 45 or 46 cents.

Senator DOUGLAS. And they came down slightly below you?

Mr. SAFIR. I would say about the same.

If I may volunteer an additional explanation, you asked how can we do this. The rate that we quoted on this 87 or 45 cents situation is not too different on the movement from Europe back to the United States as their existing rates that they are down to now on their vehicles that they are bringing home. All we have done is reduced the rate for bringing home a container of household goods down to the rate for the privately owned vehicles that MSTS has negotiated the lines down to.

So if it is appropriate for vehicles, it is appropriate for a container of household goods to bring home.

Senator DOUGLAS. In other words, MSTS drove a sharper bargain on automobiles being brought home by military personnel than they drove on household goods going out; is that right?

Mr. SAFIR. No, I can't say that, sir.

Senator DOUGLAS. You say that the rate which AGAFBO filed, however, was to prevail for only 1 month, and that on April 30 it was to go back to 58½ cents.

Mr. SAFIR. Unless it was to be further extended. They made that qualification.

Senator DOUGLAS. How long would this contract apply?

Mr. SAFIR. We are obliged to a 6-month ship charter on four vessels at the present time.

Senator DOUGLAS. So your contract would have applied for 6 months?

Mr. SAFIR. Yes, sir; at least.

Senator DOUGLAS. And if you lose that contract——

Mr. SAFIR. We have no contract, Senator, with the Department of Defense.

Senator DOUGLAS. But if you had received the contract from the Department of Defense, how long would your rate have lasted? Was it for a year?

Mr. SAFIR. Contracts, Senator Douglas, are not let for household goods for a specific period. It is just for a given shipment. We were taking our chances that the moving industry would come with us on the basis of this situation. This was a calculated risk.

Senator Douglas. In other words, you believed that the other van lines would join together and would get a better system of packing goods, more compact shipments, and that this would justify both lower rates and lower shipping rates: is that right?

Mr. Safir. No, sir; not exactly. The original Liberty-Pac concept had inherent in its inland increment a savings of about $2 a hundred pounds. We felt that because of the fact that the new container, which is a permanent steel situation rather than the existing wood or plywood type, would affect ease of handling in shipping and was capable of being stowed on deck rather than underdecks. As such, it should receive some consideration as far as the rate was concerned.

This was the original situation. If the lines had given me a rate at that time, I don't think I would be here today. It was not our intent at that time to go into the steamship business.

Senator Douglas. When this Mr. Walsh suggested that you join AGAFBO, were hopes held out that you could get an assignment of cargo?

Mr. Safir. There were no inducements offered, sir, to join AGAFBO except an informal invitation. Further than that, nothing.

Senator Douglas. Most transactions in life appear through informal invitations. What was the inducement to join AGAFBO aside from being freed from retaliatory effects?

Mr. Safir. None. No one mentioned that we would be free from retaliation in any way at all. As a mater of fact, we would have been more subject to controls had we done so.

Senator Douglas. What was the attitude of Military Sea Transportation Service to your offer of a lower rate using steel containers which would protect the goods from rain and weather troubles?

Mr. Safir. Favorable.

Senator Douglas. Suppose the lines run you out of business, as they seem to be doing——

Mr. Safir. Trying to do, sir.

Senator Douglas. And later return the rate to 58½ cents? How can they justify that?

Mr. Safir. I can't answer that, sir.

Senator Douglas. I think we are realizing that the tactics which Tarbel said the Standard Oil Co. practiced in the 1870's and 1880's have not completely disappeared: that is, of predatory price cuts, and coercion of potential competitors.

Is any representative of the Maritime Commission present?

Mr. James Mazure. I am Admiral Harllee's assistant.

Senator Douglas. Has this matter come to your attention?

Mr. Mazure. Yes, it has, and I am advised that the Managing Director has been in touch with Sapphire on the matter and is attempting to collect data on this rate with a view toward possible investigation of it.

Senator Douglas. But if in the meantime he is forced out of business——

Mr. Mazure. On the face of it, Senator, we have no reason to disapprove the rate. It is a rate reduction.

Senator Douglas. The 1914 Federal Trade Commission Act and the Clayton Act made predatory price cutting a form of unfair competition, and so, I believe, did the Shipping Act.

Mr. Mazure. It is unlawf
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Senator Douglas. Is the
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Mr. Mazure. It is unlawful under the Shipping Act; yes, sir. The rate was filed, Senator, on March 29. My understanding is that the staff immediately contacted Sapphire in an attempt to gather the data that it would need to go into even a preliminary investigation. I don't know at this time how much success we have had in gathering that data. Without that kind of information, we cannot proceed to investigate.

Senator Douglas. Is the representative of Military Sea Transport Service present? Has he reported back as to what has been done with the carriage contract? Someone went to the telephone, I believe.

You didn't inquire of the Military Sea Transport Service?

Mr. Mazure. I did not, Senator. We have no way of knowing whether that tender has been accepted.

Senator Douglas. I would like somebody to inquire from MSTS what action has been taken. I see a volunteer.

Mr. W. Lyle Bull. I am with the AGAFBO Lines, Mr. Chairman. I am to testify. I simply want to say, if I may, sir, that in view of the allegations made by Mr. Safir, we of the AGAFBO Lines categorically deny anything, but we are going to see that there is an immediate investigation by the Maritime Commission as to the acceptance of the Sapphire offer. It has not been made clear that that offer was presented through the Department of Defense, not to MSTS, under a tender, and has been accepted by the MSTS.

Senator Douglas. Which offer was accepted?

Mr. Bull. The Sapphire offer.

Senator Douglas. Has been, or was?

Mr. Bull. Has been. The Military Sea Transportation Service has simply granted—they have made one sailing on April 1, I believe, and they have another sailing scheduled to come up on April 14.

In connection with that, and in consideration of the low general cargo rate, MSTS after reviewing the financial status of Sapphire, has agreed to ship on Sapphire on Government bills of lading, not under a shipping contract, on the next sailing, under berth terms.

Senator Douglas. Who received the sailing on April 1, AGAFBO or Sapphire?

Mr. Bull. Sapphire had a sailing on April 1. I can give you much more detail. I didn't want to interrupt you too long, Senator, but when I come to the table I can give you very much more detail.

Senator Douglas. Did you get the sailing on April 1, Mr. Safir?

Mr. Safir. We sailed on April 1 without any general cargo from MSTS; none.

Senator Douglas. In other words, you did not get the contract for moving on April 1.

Mr. Safir. We had filed rates a few weeks ago for MSTS cargo, and it apparently, and I think properly, took time for the MSTS to check out both my financial responsibility and everything else in connection with this. MSTS has taken a position that cargo will be booked on our vessels after we have made at least one prior sailing from a particular port.

So since we are sailing now on the 14th on our second sailing, MSTS has booked a fair amount of general cargo on our vessel.

Senator Douglas. On the 14th?

Mr. Safir. On the 14th.

Senator Douglas. The question comes whether they will do so again since AGAFBO has a lower rate.

Mr. Safir. Only as to household goods, sir.

Mr. Temko. Not at this time, Senator. Right now, at least as of the last readings we have, the Sapphire Lines rate for general MSTS cargo was 40 cents per cubic foot and I think the lowest AGAFBO rate for general cargo is 54½ cents, the difference which Mr. Sapphire referred to in his prepared statement.

Senator Douglas. General goods or household goods?

Mr. Temko. This is general goods.

Senator Douglas. I want to thank you, Mr. Sapphire, for coming. It is a very public-spirited act for you. I appreciate you coming very much.

Mr. Safir. Thank you, Senator.

Senator Douglas. I hope the Maritime Commission will follow this case very closely.

Mr. Mazure. We shall, Senator.

Senator Douglas. I intend to direct a letter to the Commission and obtain a report.

The next witness will be Mr. John W. Lyle Bull.

TESTIMONY OF W. LYLE BULL, SPECIAL REPRESENTATIVE OF AMERICAN EXPORT ISBRANDTSEN LINES, APPEARING IN BEHALF OF THE AMERICAN STEAMSHIP TRAFFIC EXECUTIVE COMMITTEE AND THE ATLANTIC & GULF AMERICAN-FLAG BERTH OPERATORS; ACCOMPANIED BY ALEC COCKE, PRESIDENT, LYKES BROS. STEAMSHIP CO.; EDWIN A. WESTER, VICE PRESIDENT OF PACIFIC FAR EAST LINE; AND ELMER MADDY, COUNSEL

Mr. Bull. My name is W. Lyle Bull, special representative of American Export Isbrandtsen Lines in Washington, D.C. I am appearing before your committee, however, on behalf of the American Steamship Traffic Executive Committee and the Atlantic & Gulf American-Flag Berth Operators, known as AGAFBO. This is an organization composed of all of the American-flag lines, both subsidized and unsubsidized, operating regularly scheduled sailings in berth line services from U.S. gulf, South Atlantic and east coast ports. I am accompanied by Mr. Edwin Wester, vice president of the Pacific Far-East Lines, a member company of the West Coast American Flag Berth Operators (WACAFBO), an organization similar to AGAFBO but comprised of American-flag lines operating berth services from our west coast ports.

I am also accompanied by Mr. Alec Cocke, vice president of Lykes Brothers Steamship Co., and Mr. Elmer Maddy, our attorney. While it is not in my prepared statemnet, I would like to explain that both AGAFBO and the west coast group are organizations formed—they are not conferences but organizations formed—at the request of the Military Sea Transportation Service to afford a means of having a single channel through which MSTS could conduct freight rate negotiations. It is unfortunate, Mr. Chairman, that I can't read my prepared statement now because, with your permission, I would line to address myself to some of the things you have just heard with respect to the Sapphire Steamship Co.

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DISCRIMINATORY OCEAN FREIGHT RATES AND THE BALANCE OF PAYMENTS

THURSDAY, MAY 19, 1966

Congress of the United States,
Subcommittee on Federal Procurement and
Regulation of the Joint Economic Committee,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to recess, in room S-407, the Capitol, Hon. Paul H. Douglas (chairman of the subcommittee) presiding.

Present: Senator Douglas.

Also present: John R. Stark, deputy director; Thomas H. Boggs, Jr., consultant to the subcommittee; Donald A. Webster, minority economist, and Hamilton D. Gewehr, administrative clerk.

Chairman Douglas. The committee will come to order.

This morning we are continuing our hearings on discriminatory ocean freight rates and the balance of payments, and the related topic of rates on Government cargoes.

Before we proceed, I would like to ask unanimous consent to place in the hearing record, correspondence received from the Renegotiation Board, the Alaska Steamship Co., the Port of Toledo, and Edward Gottlieb & Associates; a statement from Mr. Marshall Safir, chairman of the board of Sapphire Steamship Co.; a statement from Jerome Siegel, chairman, the Titan Industrial Corp.; and an article appearing in Traffic World magazine by Commissioner George Hearn, of Federal Martime.

Hearing no objection to this unanimous-consent request, this will be done.

(The documents referred to follow:)

The Renegotiation Board,
Washington, D.C., May 9, 1966.

Hon. Paul H. Douglas,
Vice Chairman, Joint Economic Committee,
U.S. Senate, Washington, D.C.

Dear Senator Douglas: I am pleased to respond to your letter of April 28, 1966 concerning the rates charged by U.S. flag operators to the Department of Defense for transportation services. You state that the matter was referred to the Board by MSTS last year, and you request a statement indicating the Board's decision and the reasons therefor. Presumably you are referring to Admiral Donaho's letter to the Board, dated March 30, 1965, which was introduced into the Subcommittee hearings on April 7, 1965 (p. 48).

As you know, Section 106(a)(4) of the Renegotiation Act of 1951, which exempts contracts and subcontracts with common carriers for transportation under certain circumstances, was amended in 1954 to provide in part as follows:

". . . In the case of the furnishing or sale of transportation by common carrier by water, this paragraph shall apply only to such furnishing or sale which is subject to the jurisdiction of the Interstate Commerce Commission

I would recommend for a start that a competitive rate schedule be established applicable to those items of export considered of priority importance such as fertilizer to India. Similar competitive rates could subsequently be set for heavy machinery, for instance, needed by emerging nations in the creation of their modern-day economies.

But in the long run the goal must be established for all exports of an ocean freight rate structure that permits U.S. goods to move to foreign markets without the handicap of top-heavy ocean shipping costs.

This hearing is immediately concerned with ocean freight rates, but nevertheless serious consideration should also be given to rates charged by railroads and other inland carriers on export goods moving to seaboard, in a move similar to one urged by the Export Expansion Council with respect to export coal.

The Maritime Commission should be empowered to open discussions with the inland car iers aimed at development of a special rate structure for goods moving direct[illegible] into the export market. Giving export goods the advantage of less-costly ch[illegible]es for transportation to seaboard would be one means of off-setting the direct subsidies often enjoyed by foreign exporters.

To be sure, ocean freight rate disparities are not the only drag on expansion of exports.

Tax changes beneficial to the export trade have been proposed by the Council and recently the Export-Import Bank of Washington announced a series of 17 moves to liberalize existing export insurance, guarantee and direct lending programs.

Taken together, these developments point to an awakening realization that our export trade can grow and prosper only with the same helpful understanding in Congress and the administrative agencies that prevails in the Administration.

For some 30 years expansion of world trade and American particapition in that trade has been an objective of our liberal foreign trade policies, a position restated by President Johnson in proclaiming World Trade Week for 1966.

Because of the importance placed by the Administration on expanded export trade, I believe that now is the time for modernizing the Federal rules under which exporters work.

Not only should there be a revision in ocean freight rates to remove inequities that hamper our shipments abroad, but serious consideration should be given to the tax proposals of the Council, and to the possibility of improved inland freight rates on export goods moving to U.S. ports.

STATEMENT OF MARSHALL P. SAFIR, ON BEHALF OF SAPPHIRE STEAMSHIP LINES, INC.

Mr. Chairman and Members of the Subcommittee:

My name is Marshall P. Safir. I am the Chairman of the Board of Directors of Sapphire Steamship Lines, Inc. Sapphire Steamship Lines is a recently formed American company operating American flag ships in berth service. I last appeared before the Subcommittee on April 8, 1965. My testimony dealt with: (1) The reasons for the formation of Sapphire Steamship Lines; (2) the obstacles to entry established by American flag operators and others; and (3) the reactions of the Department of Defense to Sapphire's proposals of substantial savings for the carriage of household goods and general military cargoes.

In my testimony of April 8, 1965, I explained that Sapphire Steamship Lines was formed simply because our inland moving companies which transported military household goods were unable to obtain realistic transatlantic ocean freight rates for household goods from the member lines of AGAFBO—the Atlantic and Gulf American Flag Berth Steamship Operators. One of our companies, beginning in September of 1964, proposed to the Department of Defense modifications in its procedures for the carriage of household goods. These proposals contemplated a saving to the Department of Defense of $5 per cwt. on the transportation of household goods. For example, when a sergeant is transferred from the United States to post in Germany, the Government rate for the transportation of his household effects would be $25.60 rather than $30.60 per cwt.

This reduction would be made possible by the utilization of reusable containers which reduce handling costs and make possible other savings. It anticipated a rate for the ocean carriage of military household goods which took cognizance of the facts that, first, containerized cargo is easy to handle with a lower inland freight rate, and, second, military household goods move in substantial amounts

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in both directions across the Atlantic and for this reason should not be subject to a freight rate which was based primarily on eastbound carriage. On December 29, 1964, the Department of Defense approved our proposal, stating that it would become effective April 1, 1965, as it did. Our moving company, however, was not successful in its attempt to secure a downward revision in ocean freight rates from the established American flag lines. Consequently, Sapphire Steamship Lines was organized to provide an American flag berth service which would make available to our companies and others a reasonable ocean freight rate on the carriage of household goods.

While the impetus for the organization of the Sapphire Steamship Lines was the carriage of household goods at reasonable rates, Sapphire Steamship Lines does not limit its service to the ocean carriage of such goods. Staffed by experienced steamship men, it is engaged in a regular berth service to carry in either direction across the Atlantic commodities for commercial shippers and for governmental organizations, including the Department of Defense. Sapphire's tariffs represented reduced rates on household goods and on general Defense cargoes. For example, Sapphire's rate for general Defense cargoes is 40¢ per cubic foot. This rate was 14½¢ lower than the rate charged by the lines which belong to the Atlantic and Gulf American Flag Berth Steamship Operators.

Last year I described to the Subcommittee the efforts members of AGAFBO (most of whom are subsidized U.S. flag operators) to put Sapphire Steamship Lines in a position where it could not remain in business. I would like to say simply that such efforts have continued.

However, Sapphire Steamship Lines have won two significant victories.

Last year, as soon as we began operating ships on the North Atlantic, all members of AGAFBO reduced their rates on a selective basis. However, on March 1, 1966, the AGAFBO lines gave up the rate battle and raised their rates back to the levels existing before Sapphire entered the steamship business. Sapphire Steamship Lines has maintained the same low rates.

Last year we indicated that Sapphire's rates would result in savings to the Department of Defense of at least $5 million per annum. The Department of Defense has estimated that its savings approximated $14 million during the one year period in which the lines met Sapphire's low rates. Furthermore, as is known to the Subcommitttee, the Department of Defense has announced that it will no longer procure ocean steamship service on a negotiated rate basis with AGAFBO and its counterpart on the West Coast, WAGAFBO, but will seek competitive bids should competitive bidding assure fair and reasonable rates for military cargoes.

Sapphire has shown that the rates charged in the past by AGAFBO carriers were unreasonably high. Sapphire Steamship Lines in recent months has been making a profit on each voyage in spite of the difficulties which AGAFBO has put in its way. In the past year, it has been able to purchase three vessels and need no longer rely on chartered vessels. Although we have been successful in the past, we expect an even brighter future. Our competitive spirit was a catalyst to the Department of Defense and perhaps is responsible for the new procurement policies recently announced. Our response to competition is to continue to seek new and more efficient methods of ship construction and operation. We believe that our new ideas will result in additional significant changes in the maritime policies of the United States.

The Maritime Administration announced on May 9, 1966, that it would guarantee the mortgage for the construction of three fast container ships for an unsubsidized company providing a liner service. Sapphire Steamship Lines demonstrated to the Maritime Administration that it is feasible to build ships in American shipyards without subsidy and to operate them under our flag without subsidy. I might mention that this is the first time the Maritime Administration has supported an unsubsidized liner company by providing Title II Insurance.

In summary, Sapphire Steamship Lines has satisfied the Maritime Administration that an unsubsidized service under the American flag employing unsubsidized American ships and American seamen is feasible. In its past operations, it has established that the Department of Defense has paid unnecessarily high freight rates and that it can achieve substantial savings through requiring competitive bidding for ocean transportation service.

Although we fully support the new procurement policies of the Department of Defense, we do believe that American subsidized lines should be denied subsidy on that portion of their cargoes for which no foreign flag competition exists.

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Finally, Mr. Chairman and Members of the Subcommittee, we would like to express our support for the efforts which Admiral Harllee and the Federal Maritime Commission have undertaken to fairly regulate both American and foreign flag steamship lines operating in our foreign commerce. As you are aware, the Maritime Commission has been investigating for almost a year the level of rates on government cargoes, and it was in Docket Number 6513 that the Department of Defense announced its new procurement policies.

Thank you, Mr. Chairman.

[From Traffic World]

"INTERVIEW"—FMC MEMBER PROPOSES UNIFORM ACCOUNTING SYSTEM FOR SHIP LINES IN FOREIGN TRADE—COMMISSIONER GEORGE H. HEARN, OF FEDERAL MARITIME COMMISSION, ENLARGES ON PROPOSAL MADE IN DISSENTING OPINION AND IN ADDRESS AT TULANE UNIVERSITY TO PROVIDE NEEDED COST DATA IN RATE CASES

(By Lewis W. Britton)

Commissioner George H. Hearn has been a member of the Federal Maritime Commission since July 22, 1964. The proposal he advanced for a uniform system of accounting for shipping lines serving the foreign trade of the United States, which gave rise to this interview, was made out of a transportation background of some extent.

From 1961 until he became a member of the FMC, Commissioner Hearn served as a special assistant to Commissioner G. Joseph Minetti of the Civil Aeronautics Board. Prior to that he was associated with a New York City law firm specializing in admiralty matters and he has served, by appointment of judges of federal courts, as special master in admiralty and as a commissioner to hear and determine various questions of admiralty law.

In view of objections of foreign governments to the furnishing of data on commodities carried by their shipping lines in U.S. foreign trade, exploration of Commissioner Hearn's idea for a uniform system of accounts for ship lines in U.S. foreign trade seemed desirable. Traffic World's request for an interview for that purpose was granted by Commissioner Hearn. The interviewer's questions and the commissioner's answers follow.

In your speech at Tulane University on March 23 you advocated a uniform system of accounts to be used by all carriers in the U.S. foreign commerce. The new section 43 of the 1916 act empowers the Federal Maritime Commission to "make such rules and regulations" as are necessary to carry out the provisions of the act. Would you anticipate the same or similar objections by foreign governments as were made to the section 21 orders?

First of all one important point to remember, is that the Federal Maritime Commission's mandate from the Congress under the shipping act is the promotion of the foreign commerce of the United States. Common carriers by water are only one essential adjunct in this endeavor. Freight forwarders, terminal operators, ports, etc. are also essential and important parts of this undertaking and consequently we must remember that we regulate the foreign commerce to insure fairness for all participating therein. We are not charged with the responsibility of promoting the United States merchant marine, but the foreign commerce of the United States, which necessarily plays such an important role in the overall entire economy.

Consequently, in my speech at Tulane University on March 23 I was restating my published dissent to the Commission's order of investigation in docket No. 65-45, Investigation of Ocean Rate Structures in the Trade Between United States North Atlantic Ports and Ports in the United Kingdom and Eire (T.W., Jan. 1, p. 49). My remarks at Tulane were in accordance with my opinion as previously stated in that case last December. In the North Atlantic Ports-United Kingdom case I indicated that meaningful findings under section 18(b)(5) of the shipping act, without knowing the carriers' cost of doing business, could not be made and that section 43 of the act, passed on the very same day as section 18(b)(5), authorizes the Commission to "make such rules and regulations as may be necessary to carry out the provisions of the act." Since one of the provisions of section 18(b)(5) is a mandate to strike down unreasonably high or low rates, then our obligation to explore seriously—and I might

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AUTHORIZE APPROPRIATIONS FOR CERTAIN MARITIME AND COAST GUARD PROGRAMS

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HEARINGS

BEFORE THE

MERCHANT MARINE SUBCOMMITTEE

OF THE

COMMITTEE ON COMMERCE

UNITED STATES SENATE

NINETY-SECOND CONGRESS

FIRST SESSION

ON

S. 981

TO AUTHORIZE APPROPRIATIONS FOR CERTAIN MARITIME PROGRAMS OF THE DEPARTMENT OF COMMERCE

S. 1220

TO AMEND THE ACT TO AUTHORIZE APPROPRIATIONS FOR THE FISCAL YEAR 1971 FOR CERTAIN MARITIME PROGRAMS OF THE DEPARTMENT OF COMMERCE

S. 1223

TO AUTHORIZE APPROPRIATIONS FOR PROCUREMENT OF VESSELS AND AIRCRAFT AND CONSTRUCTIONS OF SHORE AND OFFSHORE ESTABLISHMENTS FOR THE COAST GUARD

MARCH 30, 1971

Serial No. 92–26

Printed for the use of the Committee on Commerce

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Senate Committee on Commerce. 92d Congress.

U.S. GOVERNMENT PRINTING OFFICE
68-129 WASHINGTON : 1971

able to communicate with all Coast Guard operating units wherever they may be in the Pacific *and* to work 100% of the merchant vessels who meet international standards for radio equipment 85% of the time.

Mr. Chairman, this is an important point in Coast Guard history—a point where we must face up to the unpleasant truth that we can no longer invest in hardware at the expense of facilities for the health, comfort and training of our personnel. We must start now and continue over the next several years to provide the equipment and facilities needed for new and complex tasks. At the same time we must restore our ability to meet our traditional responsibilities, which are growing at a rate that is already putting a severe strain on our resources and our ability to respond properly.

At the risk of redundancy let me close by saying that the single most important asset we have had over the years has been our people, whose selfless dedication, sacrifice and expertise have given the American taxpayer as large a return for each dollar he has spent as any program I know. We must take positive action *NOW* to protect that asset, for without it the Coast Guard cannot continue to perform as it has over the years as the only organization of its kind in the world, devoted to the protection of mankind and his environment in a wide and diverse range of endeavor.

Senator **Hatfield**. We will proceed with the hearing now on S. 981 and S. 1220 and authorizations for the maritime program in the Department of Commerce.

This morning, we have the Honorable Andrew Gibson, Assistant Secretary of Commerce, and Mr. Marshall Saffir. And I think both of you will be offering testimony.

First, we are very happy to have Secretary Gibson with us, and you may proceed as you wish. We will have your testimony printed in the record as written, if you wish to summarize or handle it any other way which you care.

STATEMENT OF HON. ANDREW GIBSON, ASSISTANT SECRETARY OF COMMERCE, DEPARTMENT OF COMMERCE; ACCOMPANIED BY COMDR. STEVEN LAZARUS, USN, DIRECTOR, OFFICE OF POLICY AND PLANS, MARITIME ADMINISTRATION

Mr. **Gibson**. Thank you.

Mr. Chairman and members of the committee, I appreciate this opportunity to appear before your committee with reference to our requested supplementary authorization legislation for fiscal year 1971. The proposed amendment requests authority to liquidate contract authorization for operating-differential subsidy in the amount of $80 million.

This authorization relates to 2 important requirements for fiscal 1971, which developed subsequent to formulation of original budget estimates for the year—changes in the subsidy payment schedule in fiscal year 1971 of $39,700,000 and liquidation requests for unpaid, accrued subsidies, fiscal year 1969 and prior years of $40,300,000.

The Merchant Marine Act of 1970, Public Law 91–469, contains many improvements in the system by which operating-differential subsidies are determined and paid the U.S.-flag merchant vessel operators. Among these are reduction in the number of subsidizable items of expense for cargo vessels and establishment of a wage subsidy index system designed to relate subsidies to the general trend of wage increases in the country. For subsidized operators who will participate in the new subsidy program, a payment schedule for liquidation of accrued subsidies is provided which requires monthly payment of 100 percent of wage subsidies and 90 percent of all other subsidies rather than quarterly payment of 90 percent of all items as in the past.

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This requires the payment of 2 months additional subsidy in fiscal year 1971. In the past, operators were reimbursed for operating-differential subsidy 3 months after the expense was incurred.

The new procedure seeks to make the payment as current as possible.

The required increase in appropriation relating to this legislative authorization of the Merchant Mrine Act of 1970 is estimated at $39,700,000. The balance of the increase in the 1971 authorization, $40,300,000, provides for liquidation of fiscal year 1969 and prior year accruals which have remained unpaid, awaiting agreement between operators and the Government as to final subsidy rates.

Agreements have now been reached with most of the operators with respect to these final subsidy rates so that $40,300,000 of the amount previously held back with respect to fiscal year 1969 and prior years can be paid during fiscal year 1971.

Mr. Chairman, I urge the committee's favorable consideration of this requested supplemental authorization of $80 million which when combined with available funds is expected to provide required funding for current operations as well as to permit liquidation of a substantial portion of prior-year claims for which the Government is contractually liable.

This concludes my statement, Mr. Chairman. I will now be happy to answer any questions that you or any member of the committee have concerning this authorization request.

Senator HATFIELD. Secretary Gibson, I am sure you are familiar with Mr. Marshall Saffir's objections he has raised relating to the 1971 supplemental. Will you give us your views as to these objections he has raised?

Mr. GIBSON. Mr. Chairman, this is a matter currently before the Subsidy Board for consideration. I am a member of that Board. We are about to hold hearings on the entire matter, and I would prefer to wait until we have all the evidence in before making any judgment.

Senator HATFIELD. Do you think any action we might take on this committee would have an effect on this docket S. 243?

Mr. GIBSON. I believe if I were to comment substantively it would tend to possibly prejudge the hearings and the ruling that we will be making; yes, sir.

Senator HATFIELD. Are you suggesting that we delay any action on this until after the Subsidy Board has made its decision?

Mr. GIBSON. Well, the requirements that we are making today are twofold. The Merchant Marine Act of 1970 calls for change in the payment of subsidy, and in order to carry out the intent of the act, these additional funds are required.

Also the Government has owed these companies large sums of money for many years. We have worked very hard in the last 2 years to try and clean up this huge backlog. And these funds in my judgment are now due and payable.

These companies have other sources of funds should Mr. Saffir's claim be sustained. So I don't, in my judgment, relate funds that have in some cases been outstanding going back to 1961 to the issue being raised by Mr. Saffir. We are now in a position to make this payment, assuming the supplemental funds are provided, and I don't believe that that should be linked to any other outstanding claims.

Senator HATFIELD. Then, if I understand you correctly, can you counsel this committee one way or another as to any action we should be taking on this supplemental request prior to or following the action on the part of the subsidy Board?

Mr. GIBSON. My judgment is that you should hear our request for this supplemental appropriation on its merit alone, and Mr. Saffirs' claim should be weighed on its merit and one should not relate to the other.

Senator HATFIELD. So if we go ahead then and authorize the funds, there would be no impact on your docket 243? Is that correct?

Mr. GIBSON. That's correct, sir.

Senator HATFIELD. All right.

It has been about 6 months since the enactment of the Merchant Marine Act of 1970. I believe from either statements attributed to you or alluded to you today, the shipbuilding program has really gotten off to a rather slow start. Can you explain to us why that has happened?

Mr. GIBSON. Yes, sir, I think I can. Prior to the enactment of the bill, we had funded a fairly large study. This was with two contractors who, in fact, were two large shipbuilders. They put together marketing teams and systems teams to determine the kind of ships that should be built under the new program.

In other words, we did not want this a Government-dictated ship type but one that the commercial market would consider viable.

An extensive study was made, and these contractors developed pro forma designs based on that study.

Following this study, the industry came forward with considerable enthusiasm and we received a large number of general applications for the type of ships that were developed as a result of the study.

The study centered around ships that were not in general operation. The new bill provided for the first time for the construction of bulk carriers, for the subsidizing of bulk carriers. And the bulk carrier designed in the program shown in this study was a relatively small size by world standards. It might be termed one of what they call "Panamax." This is the largest ship that will go through the Panama Canal. This also is the largest ship that can be accommodated in the Atlantic and Gulf Coast ports of this country.

It's quite apparent that large numbers of ships of this relatively small size cannot be warranted in world trade, and as the prospective owners more thoroughly investigated the charter market it's clear that they could only find limited applications for ships of this size.

There is no question in my mind that we will build some of this Panamax type, either tanker or bulk carrier, but it is clear to me that the larger program will involve much larger tankers than this, much larger bulk carriers that are economically viable by world standards.

So our failure was to initially identify this market coming in this quickly. We had always assumed that long before the end of the 10-year program these large bulk carriers would be a part of the American-flag merchant fleet. I think that it has now become clear that these large bulk carriers will become a part of the American-flag fleet much sooner than we had anticipated.

Senator HATFIELD. You mentioned this study that the Department carried out. Was this an intra- or in-house study? Or was this a contractor's study?

mercial ship operations; advanced tug-barge systems which give promise of competing very effectively with foreign ships for world trade; and advanced ports and terminals to handle the new ship types or supersize bulk carriers.

In the third area, Maritime Technology, key programs are geared toward advancing the state-of-the-art in maritime engineering in order to provide technological support for the more immediate developmental efforts and enhance their probability of success.

Key programs have all been chosen on the basis of their national significance and the high benefits they offer relative to their costs. The benefits are derived by analyzing the potential impact of a project on the President's 300 ship program. The evaluation process used to choose the projects for implementation takes into account the time value of money by discounting future economic benefits to the present time ("net present value") and relating these benefits to the "investment," or cost, of the project. There are many high benefit/cost ratio projects which can be included in the total R&D program. Due to fund limitations, only those have been included which bring at least a 300% return on the project cost.

"(d) reserve fleet expenses, $4,318,000." Funds of $4,318,000 are requested for expenses to be incurred in the preservation and custody of reserve fleet vessels. The request reflects a $357,000 decrease from the $4,675,000 authorized forFY 1971 incident to the declining number of ships in the reserve fleet. Included within the requested total are amounts for expenses of maintaining Marad owned warehouses used for care and maintenance of equipment for outfitting reserve fleet vessels.

"(e) maritime training at the Merchant Marine Academy at Kings Point, New York, $7,300,000." An authorization of $7,300,000 is proposed for the continued maintenance and operation of the U.S. Merchant Marine Academy at Kings Point, New York. The increase of $500,000 requested over the 1971 level is required mainly to complete rehabilitation of the Mallory Pier. Additional funds are also required in order to effect compliance with Presidential Executive Orders on pollution abatement, and for mandatory pay increases.

The 1972 program anticipates continuation of the current graduation rate of about 215 merchant marine officers annually. The appropriation covers cadet costs such as uniforms and textbook allowances for which an average annual amount of $475 is paid to each cadet, food service, etc.

Provision is also made for the maintenance, repair, and operation of the Academy; for continued modernization of Academy buildings, including improvement of cadet housing; for continued upgrading of instructional equipment for the laboratories used in the engineering, nautical science, and math ad science departments; and for expenses incurred for program direction and administration: and support of administrative and academic staffs.

"(f) financial assistance to State Marine Schools, $2,200,000." The requested 1972 authorization of $2,200,000 provides for continuation of the program of financial assistance to six State Marine Schools as authoirzed by the Maritime Academy Act of 1958. The six participating schools are located in California, Maine, Massachusetts, Michigan, New York and Texas. The level of graduates has approximated 400 merchant marine officers per year. The 1972 program anticipates continuation of this level.

Within the total estimate of $2,200,000 the appropriation covers a request for funds in the amount of $450,000 for grants to the schools, which includes a payment of $75,000 to each school to help defray expenses. In addition, funds of $949,000 are requested to provide payment of $600 per annum for cadets in attendance. The amount allowed is intended to offset partially expenses incurred by the cadets relative to the costs of uniforms, textbooks, and subsistence.

Finally, funds of $801,000 are included to cover the maintenance and repair and drydocking costs of Government-owned training vessels on loan to the schools.

This concludes my statement, Mr. Chairman. I will now be happy to answer any questions that you or any member of the Committee have concerning our 1972 request.

Senator HATFIELD. Mr. Marshall Safir. We will be happy to have your testimony printed in full in the record, and you may handle it any way you wish at this time.

STATEMENT OF MARSHALL SAFIR, KINGS POINT, N.Y.

Mr. SAFIR. Thank you, Senator Hatfield. I think since it is fairly short, sir, I would like to read it.

Senator HATFIELD. Please proceed.

Mr. SAFIR. Gentlemen, I believe you are aware that the U.S. Court of Appeals, Second Circuit, has mandated that the Maritime Administration decide whether to recover millions of dollars in subsidy funds from certain subsidized steamship lines whom the court found to have violated section 810 of the Merchant Marine Act of 1936.

Following these decisions, the Supreme Court of the United States has denied certiorari in *American Export Isbrandtsen* v. *Safir*, when these steamship lines appealed for relief from the binding effect of the FMC on the Maritime Administration.

The court of appeals in mandating a "considered decision" by the Administration, further warned that the agency's discretion was not "unlimited" and was subject to review. The hearing at MarAd, docket S. 243, is now in progress at the Department of Commerce.

The court of appeals, at the time of its decision in February 1970, was aware of the fact that $80 million in backlog was available for recovery by MarAd, because the enclosed exhibit, "Appendix to the Budget for the Fiscal Year 1971," was submitted in my reply brief and was discussed in the oral argument in January 1970, which led to the signed decision in February.

The supplemental authorization bill, S. 1220, now before your committee, is accompanied by an executive memorandum from the Secretary of Commerce, stating that it is of the utmost importance that these billings be paid promptly, and bewailing the inordinate time that these funds have been withheld. But there is no mention of the prior requirement to make a "considered decision" after a public hearing on the recovery of these subsidy funds from most of these operators, some of whom are presently subsidized and others whose subsidies have expired.

At this point, Senator Hatfield, I would like to remark that in the remarks of the Secretary a few minutes ago, he took the position that this case of mine has nothing to do with the recovery—with the supplemental appropriation—and should be handled separately. But since what my position in effect is, is really an attempt to perfect a judgment, there are certain lines that were subsidized during the period of this violation who are no longer subsidized and who in some cases based on their own statements recently at the FMC hearings are in danger of going out of business, threatened with the possibilities of liquidation.

I checked and found that in one instance here, one of those companies that is so threatened is owed on this basis, $2 or $3 million.

Now, if a recovery was to be made in the future, the fact of the ability to disbuse these funds to a firm like that would inhibit certainly my ability to get it back from them if they were either in liquidation or potential bankruptcy or something like that.

So the tying effect of this $80 million is of considerable private interest to me, and it would be unhappy for me having this interesr and standing which the courts have determined to see these funds disbursed prior to the decision that will be necessary to put me back in business.

Senator HATFIELD. Mr. Safir, may I interrupt at the point?

Mr. SAFIR. Certainly.

Senator HATFIELD. Because the word you are using I think is really sort of key to the action that we are contemplating here. You are using the word "disbursement," and that is a very accurate word because actually what we are considering here is authorization. Then the next step is, of course, appropriation, and then the next step is disbursement through some executive agency.

Wouldn't it be more appropriate for you to bring court action—that is, I'm not telling you what to do, but I'm asking a rhetorical question. Would it be more appropriate for you to bring a mandamus action against the Administrator on the point or on the question of disbursement?

Mr. SAFIR. I'm glad you brought that up, Senator. I have been mandamusing this administration to death. I would not be in a position I am in even now were it not for a mandamus action I took 3 years ago.

The possibilities here have always been that administrative attrition would be effective against me as an individual, in the hope that while the law is specific in my situation, if you wait long enough, either the fellow is going to expire or he's going to go away or something else is going to happen, and the longer we kick it around, the better the chances are that it will just go away by itself.

While I recognize that, fortunately, under one system I have this ultimate mandamus once again on the disbursement, I wanted to bring to the attention of this committee the fact that all this would represent if you proceeded with the authorization quickly on this would be further attempts at attrition without a resolution of the problem, and that I may as well attempt to nip it in the bud rather than to go so far.

Senator HATFIELD. Just so long as the record is clear that the action of this committee, as was commented upon briefly a few moments ago by the Secretary, has no bearing or no impact upon the docket case now pending, and that your presence here is certainly welcomed—we welcome any citizen who wants to present a viewpoint—but that the action taken on authorization has no direct bearing at this time on the case pending or ultimately on the question of disbursement, except from the standpoint that we make the funds available.

You are here in a strategy move to cover your own case, which is quite appropriate. We do not fault that. But I want to make it very clear that our action is not really that much directly involved in the ultimate decision that is going to be made by the Administrator.

Mr. SAFIR. As long as I am able happily to present my views to this august body and to have the knowledge of the problem aired, I have the feeling that right will prevail.

Senator HATFIELD. Good. Thank you. Please proceed.

Mr. SAFIR. On the basis of that colloquy, I think that I should perhaps offer the rest of my statement to be put in the record and close it out at that.

Senator HATFIELD. All right. Fine. Thank you very much, sir.

Senator Stevens, do you have any questions you would like to ask at this time?

Senator STEVENS. No. I think he had some good advice from the lawyers myself.

Senator HATFIELD. Thank you very much. We appreciate your presence.

(The statement follows:)

BALANCE OF STATEMENT OF MARSHALL SAFIR

Indeed, the Maritime Administrator appears to be precipitously attempting to divest himself of the power to offset these funds—in effect, to unlock the barn door so that an $80,000,000 horse can run away.

If recovery of the subsidy funds is required, and all indications so direct certainly disbursement of this backlog prior to the mandated decision and subsequent judicial review would be an abuse of discretion which the Congress would hardly condone.

The decisions of the Court set forth clearly and unequivacolly my own personal interest in these funds once recovered or offset. The Couth of Appeals in its decision of September 26, 1969 in *Safir* vs. *Gibson*, on page 3508, states as follows:

"The legislative history (of the 1936 Merchant Marine Act) demonstrates that termination of subsidies was not designed to be purely penal measure, although quite likely the punitive effect was considered a desirable byproduct. *The primary concern manifested was with the added burden which subsidies impose on the competitive position of the victim.* We think this concern also extends to the interest of a former victim in the recovery of subsidies improperly paid in the past to lines which are still his competitors, although here the duty of the Administrator may be less absolute than in the obligation to cease payments to current violators. *In the nature of things, few complaints of violations will be received and acted upon until after some further payments have already been made. Recovery of such payments imposes an added cost on the violators and thus will partially make up to the victim for the burden which the earlier payments indirectly imposed on him.*"

On page 3509 the Court once again states:

"Since we find that Section 810 was designed to promote the competitive interest of a victim by authorizing the recovery of subsidies improperly paid in the past, it follows that this interest is legally protected, see *Hardin* vs. *Kentucky Utilities Co.*, 390 U.S. 1, 5-7 (1968), and that disregard of it is a 'legal wrong' within the meaning of section 10(a) of the Administrative Procedure Act, 5 U.S.C., section 701. While Sapphire (Steamship Lines) is not presently competing with the AGAFBO lines, we deem that irrelevant in the circumstances of this case. Sapphire was forced out of business by the violation of Section 810 and plaintiff Safir stated in an affidavit that he desired to return to the shipping business as soon as possible . . . we hold that an interruption of operations like that here does not sufficiently alter the victim's interest to take it out of the protection of Section 810 with regard to raising the issue of the Administrator's refusal to seek recovery of past payments."

Later, on page 3510, the decision states:

"While the Maritime Administrator may have some discretion in connection with the recovery of past subsidies, as distinguished from payments to current violators, the discretion is not unlimited. Cf. *American Mail Line, Ltd.* vs. *Gulick*, 411 F. 2d 696 (D.C. Cir. 1969); *Moore-McCormack Lines, Inc.* vs. *U.S.*, 38 U.S.L.W. 2112 (Ct. Cl. July 16, 1969). Specifically, he may not refuse to proceed against the AGAFBO lines without at least considering the interest of the victim, about which the Congress was so concerned."

It can be seen, therefore, that there is considerable question as to whether or not any of the subsidized steamship lines who were subsidized during the period of violation are entitled to any of these offset funds at all.

I favor the authorization in S. 1220 in its present form *only* to those subsidized lines who were not violators of Sec. 810 in the Sapphire Case. The Supplemental Appropriation Bill should be amended, however, to authorize the appropriation but not the disbursement of the remainder of the $80,000,000 until both administrative and judicial determinationas are made as to whether these funds are to be used by the Maritime Administrator to reestablish me as a United States Flag common carrier by water in the foreign and domestic trades of the United States. If S. 1220 will be amended with suitable language to cover this important change, I believe that the bill should be passed by your Committee. If, however, it is to remain in its present form, I believe that it should be tabled.

[From the Appendix to the Budget for Fiscal Year 1971, p. 256]

Status of unfunded contract authority.—The computation and approval of final subsidy rates and audit of annual accountings will make it possible to pay 100% of subsidy payable on account of operations prior to December 31, 1964. The $143 million unpaid subsidy as of June 30, 1971, represents the balance due operators under the formula for calendar year 1970; estimated amounts earned in the final quarter of 1971 for which vouchers will not be presented or paid during that year; *plus a backlog of $80 million for calendar years 1965 through 1969 withheld pending final audit and rate determinations.*

Senator HATFIELD. Are there any other persons wishing to be heard at this time?

(No response.)

If not, the hearing is adjourned.

(Whereupon, at 11:33 a.m., the subcommittee adjourned subject to the call of the chairman.)

STATEMENT BY HON. JOHN DELLENBACK, U.S. REPRESENTATIVE FROM THE FOURTH DISTRICT OF OREGON

I submit the following statement in support of including funds in S. 1223, the Coast Guard Authorization Bill, for construction and operation of a United States Coast Guard Air Station at North Bend, Oregon. I ask that you increase funds for the Coast Guard by $2.5 million for this air station. This amount consists of $1.2 million for a hangar, administration building and maintenance facility; $800,000 for barracks and mess facilities and $500,000 for equipment to operate the helicopters. The annual recurring cost is estimated to be $1.4 million.

The establishment of this Coast Guard air station is essential for the Southern portion of the Oregon coast for three important reasons: to affect search and rescue operations; to patrol against foreign fishermen's violations of United States territorial waters; and, to guard against possible pollution of the Oregon coast.

First, a helicopter air station would allow for effective search and rescue operations to be carried out. The speed with which helicopters can be dispatched and reach the site of a boating mishap would mean a great reduction in the loss of life and the destruction of property. The crucialness of the need for the air station cannot be over emphasized. Both the recreational boater and the commercial fisherman need the safety such a facility would insure.

Second, a Coast Guard air station would allow for a more thorough patrolling of the territorial waters of the United States. The rapid depletion of fish resources off the Oregon coast make such patrols necessary. There are now no doubt many violations of U.S. territorial waters by foreign fishermen—violations which could be drastically curtailed if the Coast Guard had an effective means of surveillance. An air station would provide this effective means of surveillance.

Third, a Coast Guard air station could serve as a guard against possible pollution of the Oregon Coast. Helicopter patrols could uncover possible pollution hazards in time for preventive measures to be taken. The recent oil spills from both offshore drilling and sinking oil tankers vividly emphasize the desirability to limit and if possible stop this form of ecological destruction.

It should be noted that the basic equipment, the three HH 52 helicopters, for this proposed air station are already in the Coast Guard inventory. Thus, the cost of this item is not a part of the air station and therefore should be a further incentive to act favorably on this request now.

In conclusion let me say that the versatility of the North Bend Coast Guard air station make it a desirable undertaking. The pressing needs for effective search and rescue operations, patrolling United States territorial waters, and guarding against pollution of Oregon's coast make the installation of the North Bend air station desirable. The three necessary helicopters being in Coast Guard inventory make this helicopter air station economically desirable. I hope that you will act favorably on authorizing funding for a United States Coast Guard air station at North Bend, Oregon so that construction and operation can begin in Fiscal Year 1972.

(The following information was referred to on p. 28)

S. 1223 Coast Guard Authorization.

QUESTIONS OF THE SUBCOMMITTEE AND THE ANSWERS THERETO

VESSELS

Question. With respect to the high endurance cutters program, what progress is being made in replacement of these vessels?

Answer. A minimum of 15 378-foot class vessels has been determined as being required for sole Coast Guard missions and these 15 will replace the aging 311-foot sea plane tenders. 12 of these replacement vessels have been funded, 9 are presently operational and 3 are being constructed. They will be operational in FY 72.

Question. If funds were available, what priority would faster replacement have?

Answer. Of the projects dropped from the FY 72 budget, the 378' replacement vessel construction ranks second in priority, just after the icebreaker construction. If funds were available, they would be allotted in that order.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

MARSHALL P. SAFIR, Pro Se, and on Behalf of the United States of America,

Plaintiff,

-against-

AMERICAN EXPORT LINES
AMERICAN PRESIDENT LINES
LYKES BROS. STEAMSHIP CO., INC.
MOORE McCORMACK LINES, INCORPORATED
UNITED STATES LINES, INC.
FARRELL LINES, INC.
BLOOMFIELD STEAMSHIP CO.
PRUDENTIAL GRACE LINES, INC.
PRUDENTIAL STEAMSHIP CO., INC.

Defendants.

Docket No. 77-C-1093
(Dooling, J)

MARSHALL P. SAFIR,

Plaintiff,

-against-

ROBERT W. BLACKWELL, Assistant Secretary of Commerce of the United States of America,
and
JUANITA KREPS, Secretary of Commerce of the United States of America,
and
AMERICAN EXPORT LINES
AMERICAN PRESIDENT LINES
LYKES BROS. STEAMSHIP CO., INC.
MOORE McCORMACK LINES, INCORPORATED
UNITED STATES LINES, INC.
FARRELL LINES, INC.
BLOOMFIELD STEAMSHIP CO.
PRUDENTIAL GRACE LINES, INC.
PRUDENTIAL STEAMSHIP CO., INC.

Defendants.

Docket No. 68-C-643
(Dooling, J)

CERTIFICATE OF JAMES S. DAWSON, JR., SECRETARY, MARITIME ADMINISTRATION/ MARITIME SUBSIDY BOARD, USED IN SUPPORT OF MOTION TO DISMISS, OR, ALTERNATIVELY, FOR SUMMARY JUDGMENT OF THE NON-TRADE LINES, AMERICAN PRESIDENT LINES, LTD., FARRELL LINES, INC., PRUDENTIAL LINES, INC., AND PSS STEAMSHIP COMPANY, INC.

Exhibit 12

UNITED STATES OF AMERICA
Department of Commerce

A413

MARITIME ADMINISTRATION

Washington, October 11, *19*77

I HEREBY CERTIFY *that the annexed* is a true copy of Application For Ship Mortgage and Loan Insurance Under Title XI of the Merchant Marine Act, 1936, As Amended (Title XI Case Number 112) dated January 28, 1966, filed by Marshall P. Safir, Chairman, Sapphire Steamship Lines, Inc., as contained in Volume I of Docket No. S-243, titled, "Investigation Into Alleged Violation of Section 810, Merchant Marine Act, 1936, As Amended," in the official record of said Docket on file

in the Maritime Administration, U. S. Department of Commerce

IN WITNESS WHEREOF, *I have hereunto set my hand, and caused the seal of the Maritime Administration to be affixed, on the day and year first above written.*

James S. Dawson
Secretary
Maritime Administration

FOR (6-70)

USCOMM-DC 43902-P70

APPLICATION FOR SHIP MORTGAGE AND LOAN INSURANCE
UNDER TITLE XI OF THE MERCHANT MARINE ACT, 1936, AS AMENDED

TITLE XI CASE NUMBER 112

PART I - SUMMARY INFORMATION

A414

Name of applicant
mortgagor

SAPPHIRE STEAMSHIP LINES, INC. and
ATLANTIC EXPRESS LINES OF AMERICA, INC., jointly

Street address:

250 Fifth Avenue

City and State:

New York, New York

Name of proposed
mortgagee and lender;

To be supplied

Nature of application:

Mortgage insurance and loan insurance

The proposed loan(s):

(a) Type(s) of loan(s) - (State whether mortgage or other type of loan)

Mortgage

(b) Kind of obligation to evidence the loan(s), e.g., mortgage notes or bonds (including denominations), and whether financing is by private placement or through sale of bonds to the general public.

Present plans contemplate mortgage notes by private placement with lending institutions. The denominations have not yet been determined.

(c) Purpose - (State briefly purpose with reference to Section 1104 (a) (8), 1104 (b) (2), 1106 and/or 1107 of the Act)

To secure loans made to aid in financing, including payment of loans previously made to finance, and reimbursement of the mortgagor for expenditures previously made for construction (including designing, inspection, outfitting and equipping), subsequent to enactment of Title XI, of vessels for commercial use in foreign trade on Trade Routes 5, 7, 8, 9.

(d) Amount(s) of loan(s)

Construction loan: About $40,500,000 in units of $13,500,000 for each vessel.

Mortgage loan: About $47,250,000 in units of $15,750,000 for each vessel.

(e) Period(s) of loan(s) - (State approximate dates of execution and of final maturity)

A415

- Construction loan: Approximately July 1, 1966 to April 1, 1969.

Mortgage loan: 25 years from the date of delivery of each vessel, the first of which is expected at about July 1, 1968, the second about November 15, 1968, and the third about April 1, 1969. Final maturity would therefore be about 1994.

(f) Interest rate(s)

To be supplied: not to exceed the statutory rate, but estimated at present to be 5-1/2%.

(g) Amortization schedule(s) - (Indicate scheme of periodic payments prior to final maturity, showing separately the amortization of principal)

See Exhibit D, Schedule (4) (b) for table of maturities and interest payments.

(h) Type of vessel - (Describe briefly. If vessel is claimed to be a vessel which is eligible for mortgage aid for construction under Section 509 of the Act, as amended, the Applicant shall so state)

The vessels are all-container vessels, with capacity equivalent to 1,200 standard containers measuring 20' x 8' x 8' (facilities will be provided to handle 420 containers of 20' and 410 of 40'), and 60,000 HP with sustained speed at full load of 25 knots. Their characteristics appear in Schedule II. The vessels are eligible for mortgage aid for construction under Section 509 of the Act, as amended.

PART II - APPLICATION

The undersigned, SAPPHIRE STEAMSHIP LINES, INC. (sometimes herein referred to as "Sapphire") and ATLANTIC EXPRESS LINES, INC. (sometimes herein referred to as "Atlantic"), together herein called the "Applicant", jointly hereby apply to the United States of America, represented by the Secretary of Commerce, acting by and through the Maritime Administrator (herein referred to as the "Secretary") under the Act and Regulations for insurance of:

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(a) The interest on and the unpaid balance of the principal of three mortgages each in the original principal amount of $15,750,000 to be executed by the Applicant in favor of a lending institution to be named as mortgagee, and

(b) The interest on and the unpaid balance of the principal of three construction loans in the original principal amount of $13,500,000 each to be made to the Applicant by a lending institution to be named as lender,

for the purposes and upon the terms and conditions herein set forth, including the annexed Schedules and Exhibits, and subject to all the provisions of the Act and the Regulations. In support of this application the Applicant submits the following information, in addition to that stated in Part I hereof:

I. As to the Applicant: Its Identity

A. Not applicable

B. Not applicable

C. Incorporated Companies. If the Applicant is an incorporated company, the following identifying information should be submitted:

1. Exact name of Applicant:

SAPPHIRE STEAMSHIP LINES, INC. and
ATLANTIC EXPRESS LINES OF AMERICA, INC.,
jointly

2. State in which incorporated:

Sapphire - Delaware
Atlantic - Virginia

Date of incorporation:

Sapphire - February 10, 1965
Atlantic - November 1, 1960

3. Address of principal executive offices, and of important branch offices, if any:

Principal executive offices:

250 Fifth Avenue, New York, New York

Branch offices:

1725 I Street, N.W., Washington, D. C.
925 Keyser Building, Baltimore, Maryland
37 Frankrijklei, Antwerp, Belgium

4. The following information with respect to each officer and director of the corporation:

Name and Address	Office	Nationality	Capital Shares Owned (specify type, whether voting or non-voting and percentage of total of each type issued if 5% or more)
With respect to Sapphire:			
Marshall P. Safir	Chairman	U.S.	Voting Common 50%
Arnold Weissberger	President and Director	U.S.	" " 50%
W. Leslie Schultz	Executive Vice President	U.S.	A417 -0-
Mitchell W. Rabbino	Vice President and Director	U.S.	-0-
Lawrence D. Lally	Vice President	U.S.	-0-
Erling K. Thompsen	Treasurer	U.S.	-0-
Frank J. Morelli	Secretary	U.S.	-0-

The address of Messrs. Schultz and Lally is 1725 I Street, N.W., Washington, D. C. The address of all others listed is 250 Fifth Avenue, New York, New York.

With respect to Atlantic:			
Ernst W. Farley, Jr. Box 2 AC, Richmond, Virginia	Director	U.S.	Voting Common 7,125
Robert S. Hope 529 Tower Building Washington, D.C.	Director and Secretary	U.S.	" " 3,850
Lawrence D. Lally 5065 Macomb Street Washington, D.C.	Vice President Treasurer Asst. Secretary	U.S.	" " 1,500
M. A. Mathiasen 713 Penfield Avenue Havertown, Pennsylvania	Director and President	U.S.	" " 28,500
Irene E. Schultz 1200 16th Street, N.W. Washington, D.C.	Director and Asst. Treasurer	U.S.	" " 30,000
W. Leslie Schultz 1200 16th Street, N.W. Washington, D.C.	Director, Exec. Vice President (Chief Executive Officer)	U.S.	" " 38,625
Braden Vandeventer, Jr. Citizens Bank Bldg. Norfolk, Virginia	Director and General Counsel	U.S.	" " 5,000

5. A brief statement of the general effect of each voting agreement, voting trust, and other arrangement whereby the voting rights in any share of the Applicant are owned, controlled, or exercised, or whereby the control of the Applicant is in any way held or exercised by any person not the holder of legal title

to such shares. (Give the name, address and nationality and business of any such person, and, if not an individual, include the form of organization.)

As to Sapphire: None

As to Atlantic: 3,850 shares are held in a trust for members of Kominers & Fort, a law firm, Tower Building, Washington, D. C.

II. As to the Applicant; Its Business and Affiliations

A. A brief description of the principal business activities during the past 5 years of the Applicant and of any predecessor or predecessors of the Applicant; if any change is presently contemplated (whether in connection with the work to be financed by the mortgage or loan applied for, or otherwise), a brief statement of the nature and circumstances thereof.

A418

Sapphire was formed in February 1965, and has since March 1965 conducted a steamship service on the trade route. It holds a contract to purchase Atlantic, and may merge with such line or hold it as an operating subsidiary, according to circumstances. Sapphire will furnish or procure all required financing hereunder.

Atlantic was formed in 1960 to prosecute an application to serve the same trades. It has successfully passed the statutory tests under Section 605(c) of the Act, and is awaiting final decision on its application.

B. A list of all companies or persons (herein referred to as related companies) that directly or indirectly through one or more intermediaries, control, are controlled by, or are under common control with the Applicant, together with an indication of the nature of the business transacted by each, the relationships between the companies named, and the nature and extent of the control. This information may be furnished in the form of a chart.

Atlantic: None

Sapphire:

1. Pioneer Overseas Services Corp., a service organization for freight forwarders, owned by Marshall P. Safir.
2. S.A. Pioneer Overseas Services N.V. (Belgium), a service organization and freight forwarder, owned by Marshall P. Safir.
3. Liberty-Pac International Corporation, a freight forwarder specializing in household goods, owned by Arnold Weissberger.
4. Atlas Storage Co., Inc., jointly owned by Messrs. Safir and Weissberger, is a holding company owning the Weissberger group of moving and storage companies, as follows:

(a) Liberty Moving and Storage Corp.

(b) Weissberger Moving & Storage Company, Inc., a commercial institutional mover.

(c) Amsterdam Storage Warehouses, Inc.

(d) Weissberger Delivery Service Co., Inc.

(e) Pioneer Warehouse Corp.

(f) Brooklyn Fireproof Storage, Inc.

C. A statement of whether or not during the past 5 years the Applicant or any predecessor or related company has been in bankruptcy or in reorganization under 77-B of the Bankruptcy Act or in any other insolvency or reorganization proceedings, and whether or not any substantial property of the Applicant or its predecessor or predecessors or related companies has been acquired in any such proceedings or has been subject to foreclosure or receivership during such period. If so, give details.

A419

No.

D. A statement of whether or not the Applicant or any predecessor or related company is now or during the past 5 years has been in default under any agreement or undertaking with others or with the United States or guaranteed or insured by the United States.

No.

III. As to the Management of the Applicant

A. A brief description of the principal business activities during the past 5 years of each director and each principal executive officer of the Applicant.

Sapphire:

MARSHALL P. SAFIR, Chairman, and ARNOLD WEISSBERGER, President and Director, have during the period, presided over the affairs of the various companies listed in Paragraph II-A and B.

W. LESLIE SCHULTZ, Executive Vice President, has been Executive Vice President and Chief Executive Officer of Atlantic prior to his association with Sapphire.

MITCHELL W. RABBINO, Vice President and Director, has been an officer active in the affairs of Liberty-Pac International Corporation and Pioneer Overseas Services Corp., chiefly as Vice-President in charge of their Paris and Antwerp offices.

ERLING K. THOMPSEN, Treasurer, was a fiscal officer of Central Gulf Steamship Corporation rising from Chief,Accountant to Comptroller

LAWRENCE D. LALLY, Vice President, has been Operating and Traffic Officer of Sapphire, and prior was associated with Mr. Schultz in Atlantic as Treasurer.

FRANK J. MORELLI, Secretary, has been Vice-President, Treasurer and General Manager of Weissberger Moving and Storage Company, Inc., and Treasurer of Pioneer Overseas Services Corp. He was formerly associated with Arthur Andersen & Company as senior auditor.

Atlantic:

W. LESLIE SCHULTZ and LAWRENCE D. LALLY. See under Sapphire.

A4-20

CAPTAIN M. A. MATHIASEN has served as President since May 1961, and was until retirement President of Mathiasen's Tanker Industries, Inc., Philadelphia, Pennsylvania, President and Director of Eastern Tankership Corp., Wilmington, Delaware, and Vice-President and Director of Western Hemisphere Corp., Wilmington, Delaware.

IRENE E. SCHULTZ has been Director, Assistant Treasurer and principal financial backer of Atlantic since its formation.

BRADEN VANDEVENTER, JR. has been Atlantic's General Counsel and was elected to the Board in 1961. He is General Counsel for the Hampton Roads Maritime Association, and a past President of the Hampton Roads Foreign Commerce Club.

CAPTAIN MILTON WILLIAMS has served as technical adviser for marine and terminal operations, and as labor consultant, in both of which fields he has an established position as an expert.

ERNST W. FARLEY, JR. is President of Richmond Engineering Co., Inc., Richmond, Virginia, a steel fabricator, and of Steel Services, Inc., a warehousing company of Richmond, with affiliations elsewhere in Virginia and the Carolinas; he is a member of the Richmond-Petersburg Turnpike Commission, a Director of the National Association of Manufacturers, and Chairman of the Virginia State Chamber of Commerce World Trade Committee.

ROBERT S. HOPE is a partner in Kominers & Fort, the well-known Washington maritime law firm.

B. The name and address of each other organization engaged in business activities related to those carried on or to be carried on by the Applicant with which any person named in answer to the preceding item has any present business connection; the name of each such person, and briefly the nature of such connection.

None

C. A statement of the nature and extent of any affiliations or relationships between the Applicant or any of its directors or principal executive officers, on the one hand, and, on the other hand, the contractor referred to in answer to Items V-G and any of its directors and principal officers.

The contractor has acted as Applicant's naval architect.

D. Name, citizenship, educations, background of, and licenses held by, all shore management personnel concerned with the physical operation of the ships owned by the Applicant or proposed for construction. If now the owner and/or operator of ships, furnish data as to union affiliations and existing contracts necessary to the management and operation of the ships covering such items as bunkers, repairs, stores and stevedoring, and names of companies (domestic and foreign) for which company acts as agent.

1. Operating Personnel (excluding traffic):

A421

Sapphire:

Name:	R. Simpson Hopkins
Citizenship:	British
Title:	General Manager, Operations
Education:	Androssan Academy and Royal Technical College, Glasgow, Scotland
Licenses:	British Master's Foreign-Going Certificate; British Radio-Telephone Certificate; British Radar Certificate; British Gyro Certificate
Background:	Marlin International Corp., 1964-1965, Operations Manager; Sabre Shipping Corporation and Sabre Line, 1960-1964; British Merchant Ships Officer and Master, 19[illegible]-1960, primarily with Donaldson Line

Name:	Jerome E. Joseph
Citizenship:	U.S.
Title:	Assistant Operations Manager, Port Captain
Education:	U.S. Merchant Marine Academy, Kings Point, B.S 1962
Licenses:	2nd Mate License
Background:	Moore-McCormack Lines, 1963-1965, 3rd Mate, promoted to 2nd Mate; 1962-1963, 3rd Mate aboard various American-flag freighters and a cable layer.

Name: Dillon McMullen

Citizenship: U.S.

Title Port Captain, U.S.A.

Education: U.S. Naval Academy (Annapolis, Maryland) Class of 1933; George Washington University - post-graduate work in Comptrollership

Licenses: Captain, U.S.N. (Ret.)

Background: Assistant Director, Fleet Maintenance, Office of Chief of Naval Operations, Washington, D.C. 1962-1964; Head, Reserve Fleet Branch, OCNO 1959-1962; Director, Tanker Operations and Contracting Officer, MSTS, USN, 1956-1959; previous practical experience at sea and on shore on various U.S. Navy ships, combatant and non-combatant, 1934-1955

A422

Name: Robert Kron

Citizenship: U.S.

Title: Director, European Operations

Education: U.S. Merchant Marine Academy, Kings Point (B S. 1959)

Licenses: 3rd Mate

Background: Navios Corporation (U.S. Steel) 1960-1965; Assistant Operations Manager, Nassau (Bahamas)

Name: Ivo K. Pierre

Citizenship: Belgian

Title: Assistant Operations Manager for Europe

Education: Institut St. Norbert & Athenee Royal (Antwerp, Belgium); Ecole Moyenne et Commerciale (Lierre, Belgium)

Background: Waterman Lines (Antwerp) 1958-1965; Marine Superintendent in charge of operations; Northern Shipping Services S.A. (1945-1958) - Chief Water Clerk and Head of Foreign Service.

Name: Rembert Stroehlein

Citizenship: German

Title: Port Captain

Education: German Maritime School (1958-1961)

Licenses: A-6 Master Foreign-Going Vessel
1st Lieutenant German Navy

Background: Checker (Bremerhaven) 1965; Vinnen Co. (Bremen) 2nd and 3rd Mate 1961-1964

2. Existing Operating Contracts:

(a) Union affiliations:

The Company is party to standard employment contracts (copies of which are available on request) with Seafarers International Union, National Marine Engineers' Beneficial Association, Masters Mates and Pilots, and American Radio Association.

(b) Bunkering:

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Gulf Oil Corporation

(c) Repairs:

Mathiasen Tanker Industries, Inc. acts as Port Engineer in all ports.

(d) Stores:

Mathiasen General Cargo Services, Inc. acts as procurement officer in American ports.

(e) Stevedoring:

New York: American Stevedores, Inc.
Philadelphia: Northern Metals Company
Baltimore: Jarka Corporation of Baltimore
Norfolk: Tidewater Stevedoring Corp. and Southern Stevedoring Corp.
Bremerhaven: August Sundmaker Stauerei
Rotterdam: Association of Rotterdam Stevedores
Southampton: J. Rose & Co., Ltd.
St. Nazaire: Societe De Travaux Maritimes & Terrestres

3. Sapphire does not at present act as agent for other companies.

Atlantic does not at present operate vessels. An outline of its proposed table of organization appears in its amended application for operating-differential subsidy. The contemplated amalgamation of the two companies will provide a substantial framework of experienced personnel at all levels of operation.

IV. As to the Applicant; Its Property and Activities

A. A brief description of the general character and location of the principal properties of the Applicant employed in its business, other than vessels. Describe encumbrances, if any.

Applicant's property other than vessels consists chiefly of office furniture and equipment in its various locations.

B. A statement with respect to each vessel owned by the Applicant, or operated by it under charter, giving (1) name, (2) gross tonnage, (3) net tonnage, (4) deadweight tonnage, (5) age, (6) type, (7) speed, (8) registry, and (9) identification of route or service on which operated. Describe encumbrances, if any.

Sapphire:

	SAPPHIRE GLADYS	SAPPHIRE SANDY	SAPPHIRE ETTA	NORTH HILLS
Gross tonnage	6,111	6,108.99	6,133	6,184
Net tonnage	3,519	3,524	3,551	3,519
Deadweight	10,566	10,468	10,370	10,370
Age	Built 1944	Built 1943	Built 1943	Built 1944
Type	C2-S-B1	C2-S-B1	C2-S-B1	C2-S-B1
Speed, knots	15	15	15	15
Registry	U.S.	U.S.	U.S.	U.S.

A424

Encumbrances: Mortgage covers GLADYS, SANDY and ETTA. NORTH HILLS is time chartered.

C. Full details concerning the services, routes, or lines on which the Applicant operates any of the vessels owned or chartered by it, including ports of call, frequency of sailings, description of services and voyages, and names of vessels segregated according to services, routes, or lines.

The application provides service on Trade Routes 5, 7, 8, 9, approximately three sailings per month between ports north of Hatteras and ports in the Bordeaux-Hamburg range including the U.K. See answer to IV-B for list of vessels. The ports served are New York, Philadelphia, Baltimore, Hampton Roads, Southampton, St. Nazaire, Zeebrugge, Antwerp, Rotterdam and Bremerhaven.

D. A statement of the type and nature of cargo carried during the two preceding years, on each route referred to in answer to the preceding item, the manner in which the service or line may be developed for carrying different types or nature of cargo, significant factors influencing cargo expectations for the future; also financial summary (which may be annexed as an exhibit here referred to) of voyage accounts for voyages terminated during the last 2 complete years of operation prior to the date of application.

The service was originally designed as an express carrier of household goods between Baltimore and Europe. It has expanded to carry military general cargo and vehicles on a substantial scale. The development of the commercial movement has been somewhat retarded by the incidence of a major strike during the summer of 1965, but is now expected to assume normal proportions. It has consisted up to now of the usual range of general and bulk cargo.

It is intended to adapt the service more and more to an advanced pilot operation for the proposed container service with which the present application deals. The mechanical shore devices and rapid loading techniques can be tested and perfected, while improving the operating results even of old ships. Necessary trade contacts will thus be gradually built up, and the shipping public accustomed to through-container routing. There is widespread expectation that such routing will become the major trend in the next decade. International trading and government organs are working on uniform containers suitable for rail, road and sea interchange, and on simplified documentation. The great gap is the ocean link, which this application is an important means of supplying.

A425

A summary of voyage results since March 1965 is appended as Table IV-A.

V. The Project

A. A specific statement of the purposes for which the proposed loan(s) will be expended with particular reference to Sections 1104 (a) (8), 1104 (b) (2), 1106 and/or 1107 of the Act.

To secure loans made to aid in financing, including payment of loans previously made to finance, and reimbursement of the mortgagor for expenditures previously made for construction (including designing, inspection, outfitting and equipping) of three container vessels, subsequent to enactment of Title XI, for commercial use in foreign trade on Trade Routes 5, 7, 8, 9.

B. (1) A detailed statement of the total estimated capitalizable cost of the construction of the vessel to the Applicant, determined in accordance with generally accepted accounting principles, together with a statement of the cost of any shore facilities, cargo containers, etc., proposed to be purchased, and full details as to the manner in which the Applicant proposes to finance the total amount of such costs which are in excess of the amount of an insured loan or mortgage.

There shall be included full details of any proposed security issue, including names of underwriters. If the Applicant believes that furnishing of such information might be prejudicial to pending negotiations, such information when forwarded to the Administration may be submitted under separate cover in a sealed envelope addressed to the Secretary, Maritime Administration, marked "Confidential", and enclosed in an inner envelope addressed the same way and labeled "Information Required Under Application for Title XI Insurance, Submitted Under Confidential Cover."

See confidential financial exhibits as set forth in regulation.

(2) The table of estimated vessel characteristics as listed on Schedule II of this Application, and the preliminary design information required by Schedule III of this application. If the Applicant claims the vessel to be a vessel which is, or in the case of a vessel to be reconstructed or reconditioned would have been, eligible for a mortgage aid for construction under Section 509 of the Act, give details supporting claim. There should also be given the name of the proposed supervising architect and a brief statement of his experience and qualifications.

The vessels are eligible for mortgage aid under Section 509 because they will be of more than 3,500 gross tons, and more than 14 knots speed, and will be operated in foreign trade, as required by that section.

A426

The naval architect is the Electric Boat Division of General Dynamics Corporation, Groton, Connecticut, a leading designer and builder of ships of all types, commercial and military.

See Schedules II and III for the information concerning vessel characteristics and design information.

C. Not applicable.

D. A statement of how the proposed construction will result in a vessel which will meet the needs of the service, route, or line for which intended, and the requirements of commerce with emphasis on the following factors: (A) Cargo accommodations -- cargo space and fittings and appliances for handling and stowing cargo, including containers and vehicles; (B) Passenger accommodations; [not applicable]; (C) Construction and design; and (D) Accommodations for officers and crews:

The proposed vessels are all-container and vehicle ships of high speed and mechanization. Trade Routes 5, 7, 8, 9 have averaged about 3.6 million long tons of commercial general cargo during the last seven years, rather evenly distributed between the outbound and inbound legs. This is the equivalent of about 9 million measurement tons. Expert forecasts anticipate an annual growth factor of no less than 6%, which would increase the total to 10.7 million tons by the time the new vessels are delivered. We estimate that about 70% of this amount, 7.5 million measurement tons, will prove rapidly adaptable to containerization. The three-ship fleet proposed in this application will have annual capacity of one-half this figure. Forty-five per cent of its round-trip capacity yields 1.3 million cubic feet per voyage (32,500 measurement tons) out of about 2.9 million cubic feet (75,000 tons); and this immediately attainable objective, representing a profitable operation, is equivalent to 23% of the containerizable movement. The ships are therefore of outstanding potential significance to commerce, delivering an enormous productivity factor in terms both of construction and operating cost; all individual cost items are dwarfed in their total relation. There is an evident American-flag undertonnaging in these routes, resulting from heavy military demand for berth-line space, and leading to the impression that potential commerce is being depressed. These ships will obviously permit and induce a great expansion of commerce, while of course contributing to military requirements to any extent desired. One of the strongest aids they will furnish for such expansion is a practical revolution in rates, which will be evident in the financial tables. Operated independently, they will be able to set international rate standards that can only be matched by a total conversion of foreign fleets to these designs. Even then their relative cost disadvantage will be on a much lower level of dollars than obtains among the most advanced contemporary conventional ships.

E. A description of the proposed operations, with respect to:

1. Number of sailings proposed annually, ports to be served, frequency of sailings, and proposed itinerary showing time of arrival and departure, distance between ports, seatime, port time, hours of working or idle in port, off-hire days, and also any reserve port time:

   See Exhibit E, Schedule (1)

2. Estimated annual revenue from carryings at break-even point, 50%, 75%, and 100% of vessel utilization:

   See Exhibit E, Schedule (2).

3. Estimated annual deadweight and measurement cargo tonnage and revenue to be derived therefrom with indication of principal commodities to be carried, estimated average rate per ton accruing to the Applicant for cargo carried, and estimated cargo handling costs per ton, specifying items of cost included:

   See Exhibit D, Schedules (1) and (3) for revenue and expense forecasts. See Paragraph D above for cargo forecasts. The principal commercial exports include: chemicals; pharmaceuticals; food specialties; canned goods; manufactures of all descriptions; heavy machinery; refined copper; aluminum; electronic equipment; automotive products; lubricating oils and greases; woodpulp, steel mill products; fibers and textiles; animal products and by-products; other agricultural specialties; lumber; logs; tobacco, manufactured and unmanufactured; corn; soybeans and wheat; coal; etc., etc.

Imports include the following items: automobiles and automotive products; bicycles and motorcycles; machinery; window glass and other glass products; steel mill products; brass and brassware; iron and steel pipe and tubing; aluminum products; cheese and other food specialties; frozen and chilled meats and meat products; distilled spirits, liquors, wines and beers; casings and other animal by-products; flower bulbs and seeds; rugs, carpets and linoleum; household furniture; clothing and miscellaneous textiles; china and porcelain ware; photo goods; books; plastic products; Christmas tree ornaments.

A428

4. An indication of actual and potential traffic available, showing the portion that is expected to originate at and/or to be destined for points other than the ports proposed to be served.

See Paragraph D above for a statement of traffic, both actual and potential. The service will concentrate on ports south of New York, which have in the past contributed about 30% of the total commercial movement of general cargo in the trade. It is Applicant's belief, based on independent studies, that the new type of vessel will draw on the whole trade route for cargo. Common points will be drawn by superior and cheaper service to patronize the southern tier of ports, which have hitherto been served on an outport basis by the best lines, despite often lower overland rates. On the European side, service to one continental port will in our opinion draw on the whole European hinterland, such is the complex interrelation of its economy. See attachments from various ports.

5. Identify design and indicate means of loading and discharging cargo, and number of tons or cubic feet the vessel will be able to handle per hour.

The vessels will be container ships, loaded and discharged by two gantry cranes. Present plans contemplate they will be aboard ship, but shore-based equipment is being evaluated. The handling cycle is being planned for six minutes, or ten containers per hour per crane. It is considered that with experience, this cycle can be measurably accelerated. At the indicated cycle, the vessels would be handling 25,000 cubic feet or more than 600 measurement tons per hour with two gangs. This may be contrasted with about 30 measurement tons on conventional break bulk vessels, with five gangs.

F. There shall be attached hereto as Exhibit D a forecast of operations on (1) a single voyage basis, (2) for the first year of operation with the new vessel or vessels, and (3) for the full period of the loan and/or mortgage, and a comparison with actual figures for a similar vessel of the fleet now employed in a comparable trade. Such forecast shall be prepared with marginal explanations of the basis used in arriving at each of the figures shown, reconciling material changes which have occurred or are expected to occur and shall include the following items ....

There are no existing similar vessels, but comparative data for an owned C2 are shown in Exhibit D, Schedule (5). The other data requested appear in Exhibit D, Schedules (2) and (3).

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G. If a contract for the construction, reconstruction or reconditioning has been awarded, state the name of the contractor and give full details as to the manner of award. If such contract has not been awarded, give details as to the manner in which the award is to be made.

No contract for construction will be awarded until favorable action on this application.

H. If the Applicant proposes to establish a new service, route, or line, a statement of information similar to that specified in Items IV-C and D and Item V-F with respect to such new service, route, or line, including a statement of the extent, if any, to which such new service, route, or line will compete with other transportation.

Not applicable.

I. If the proposed loan is for the purpose of constructing a new vessel, a full statement concerning any changes in existing services, routes, or lines which the Applicant proposes to make in connection with the use of the new vessel, including the names and proposed disposition of any vessel now operated by the Applicant which is proposed to be replaced by such new vessel.

The service will be practically doubled in number of sailings by substitution of the new vessels for those Applicant now operates on the route. The new schedules are attached. Furthermore, greater expansion of terminal facilities will be required to handle an all-container and vehicle operation. The GLADYS, SANDY and ETTA will be sold or traded as other replacements become available.

J. Vessel trade-ins and estimated trade-in values; also vessel trade-outs and damages for nonperformance.

The book value of the GLADYS, SANDY and ETTA is $550,000 each. We assume a trade-in value of about $330,000 each at the end of two years.

K. Not applicable.

VI. Fees and Charges

This item cannot as yet be ascertained, since financing arrangements are not yet complete, but is expected to be confined to normal commitment and other fees. There will be no payments to persons participating in development of the project.

VII. As to Schedules and Exhibits

A. A list describing the documents filed with the application, which shall include:

A430

Schedule I. The mortgagee's and/or lender's statements in support of the application (to be supplied).

Schedule II. Table of Characteristics.

Schedule III. Plans and Specifications.

Exhibit A. Copy of Charter and By-Laws for Sapphire. (Atlantic's documents are already on file.)

Exhibit B.

(1) (a) Financial statements (to be supplied in confidence).

(1) (b) Schedule of progress payments - construction of 3 container ships.

Exhibit C. Justification for interest (to be supplied).

Exhibit D.

(1) Pro-forma statements of profit and loss for 25 years, container-ship operations, single voyage data, 21 day voyages.

(2) Pro-forma statements of profit and loss, first seven years, container-ship operations.

(3) Pro-forma statements of profit and loss, 8th through 25th year, container-ship operations.

Schedules (1) and (3) - Basis for estimating gross and net freight revenues.

Schedule (2) - Pro-forma of estimated daily vessel expense.

Schedule (4) (a) - Depreciation table - straight line.

Schedule (4) (b) - Table of mortgage interest payments.

Schedule (4) (c) - Estimated government mortgage-insurance premium.

Schedule (4) (d) - Administrative expense (to be supplied).

Schedule (5) - Pro-forma of estimated daily vessel expense - owned C2.

Exhibit E.

Schedule (1) - Pro-forma 21 day voyage analysis.

Schedule (2) - Estimated Annual Revenue from carryings at break-even point, 50%, 75% and 100%.

Table IV-A - Sapphire Steamship Lines voyage results for nine-month period

B. A statement of any information which, in the opinion of the Applicant, is required to make the attached Schedules and Exhibits true and complete according to their respective terms, and not presently misleading.

See confidential report.

A431

Dated: January 28, 1966.

SAPPHIRE STEAMSHIP LINES, INC.

By: ______________________
Marshall P. Safir
Chairman

ATTEST:

____
Mitchell W. Rabbino
Vice President

ATLANTIC EXPRESS LINES OF AMERICA, INC.

By: ______________________
W. Leslie Schultz
Executive Vice President

ATTEST:

____
Lawrence D. Lally
Secretary

I, MARSHALL P. SAFIR, do certify that I am the Chairman of SAPPHIRE STEAMSHIP LINES, INC., the joint Applicant on whose behalf I have executed the foregoing application; that the Applicant is a citizen of the United States within the meaning of Section 2, Shipping Act, 1916, as amended (U.S.C., Title 46, Sec. 802), Sections 37 and 38, Merchant Marine Act, 1920, as amended (U.S.C., Title 46, Secs. 888, 889), and Section 905(c), Merchant Marine Act, 1936, as amended (U.S.C., Title 46, Sec. 1244); that this application is made for the purpose of inducing the Maritime Administrator to grant insurance pursuant to the provisions of Title XI of the Merchant Marine Act, 1936, as amended, and regulations prescribed thereunder; that I have carefully examined the application and all documents submitted in connection therewith and, to the best of my knowledge, information and belief, the statements and representations contained in said application and related documents are full, complete, accurate, and true.

A432

MARSHALL P. SAFIR

I, W. LESLIE SCHULTZ, do certify that I am the Executive Vice President of ATLANTIC EXPRESS LINES OF AMERICA, INC., the joint Applicant, on whose behalf I have executed the foregoing application; that the Applicant is a citizen of the United States within the meaning of Section 2, Shipping Act, 1916, as amended (U.S.C., Title 46, Sec. 802), Sections 37 and 38, Merchant Marine Act, 1920, as amended (U.S.C., Title 46, Secs. 888, 889), and Section 905(c), Merchant Marine Act, 1936, as amended (U.S.C., Title 46, Sec. 1244); that this application is made for the purpose of inducing the Maritime Administrator to grant insurance pursuant to the provisions of Title XI of the Merchant Marine Act, 1936, as amended, and regulations prescribed thereunder; that I have carefully examined the application and all documents submitted in connection therewith and, to the best of my knowledge, information and belief, the statements and representations contained in said application and related documents are full, complete, accurate, and true.

W. LESLIE SCHULTZ
Executive Vice President

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NOTE: The U.S. Criminal Code makes it a criminal offense for any person knowingly to make a false statement or representation to, or to conceal a material fact from, any department or agency of the United States as to any matter within its jurisdiction (18 U.S.C. 1001), or to file a false, fictitious or fraudulent claim against the United States (18 U.S.C. 287).

UNITED STATES OF AMERICA
Department of Commerce

A434

MARITIME ADMINISTRATION

Washington, October 11, *, 19*77

I HEREBY CERTIFY *that the annexed* is a true copy of the dry cargo vessel utilization and performance report forms, with accompanying instructions in use during the period 1965-1967 (form codes are MA-7801, MA 7802 and MA-578), as contained in Volume I of Docket No. S-243, titled, "Investigation Into Alleged Violation of Section 810, Merchant Marine Act, 1936, As Amended," in the official record of said Docket on file

in the Maritime Administration, U. S. Department of Commerce

IN WITNESS WHEREOF, *I have hereunto set my hand, and caused the seal of the Maritime Administration to be affixed, on the day and year first above written.*

Secretary
Maritime Administration

USCOMM-DC 43902-P70

MARITIME ADMINISTRATION
Washington, D.C.

DRY CARGO—INBOUND

VESSEL UTILIZATION AND PERFORMANCE REPORT

CARGO VESSEL ENTERING UNITED STATES PORTS IN FOREIGN TRADE

4. Name of vessel

5. Port of entry

6. Date of entry Month | Day | Year

1. Line or operator for this voyage	Name Nationality	MA USE ONLY	7. Type of vessel ☐ Freighter ☐ Combination ☐ Other 8. Flag of registry
2. Owner of vessel	Name Nationality		9. (a) Gross tons 9. (b) Draft for this voyage T S W
3. Charterer for this voyage	Name Nationality		10. Type of charter for this voyage ☐ Bareboat ☐ Time ☐ Other ☐ None 11. Type of service for this voyage ☐ Scheduled berth ☐ Other

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12. Cargo on board	Tons (2,240 lbs.)	12. Cargo on board (Continued)	Tons (2,240 lbs.)
Department of Defense cargo		Commercial cargo for U. S. discharge 300	
U. S. foreign trade 100		All cargo subtotal . . . . (100 to 300)	
U. S. noncontiguous 102		Mail and other 501	
Oncarried (Foreign) 201		Grand total . . . . (100 to 501)	
Domestic 202			
Overcarried 203			

13. INBOUND PORT-TO-PORT PASSENGER TRAFFIC IN ORDER OF UNITED STATES PORTS OF CALL

United States ports of debarkation	Foreign ports of embarkation		Number of passengers including military personnel: Total	1st	Cabin	Tourist	Other	U. S. Military personnel on board	MA USE ONLY	
		1								
		1								
		1								
		1								
		1								
		1								
		1								
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United States ports of debarkation	United States ports of embarkation									
		1								
		1								
		1								
		1								
		1								
		1								
		1								
Total passengers debarking		2								
United States citizens		3								
All other		4								
Oncarried passengers		5								
Total passengers on board		6								
Passenger capacity of vessel for this voyage		7								

Under penalty of law, I hereby certify this to be an accurate and complete report of the utilization and performance of this vessel on this voyage

Reporting company, Agent, Broker or other authorized representative

Signed by

Address

Date

Title

MA USE ONLY	1	2	3	4	5	6	7	8

14. ... remaining on Free on next	Tons (2,240 lbs)	15. Bunkers taken at (Name of foreign port)	Tons (2,240 lbs)	16. ... and Officers)	
				...	Number
...				Deck	
Water				Engine	
Stores				Steward	
Permanent ballast					
Total		17. Total vessel space available for cargo			
14. (b) Cargo carrying capacity for this voyage (Item 9 (b) less Total item 14 (a))		Dry cargo (cu. ft.)		Deep tanks (cu. ft.)	
		Refrigerated cargo (cu. ft.)		Deep tanks (gallons)	

* Total Bunker capacity reserved for use on this inbound voyage

18. Total inbound cargo (Include weight of all cargo shown as subtotal in item 12, include broken stowage in "Space occupied")	LADING OF VESSEL—ON BOARD ENTERING FIRST UNITED STATES PORT					
	TOTAL		COMMERCIAL		DEFENSE	
	Tons (2,240 lbs.)	Space occupied (cu. ft.)	Tons (2,240 lbs.)	Space occupied (cu. ft.)	Tons (2,240 lbs.)	Space occupied (cu. ft.)
Dry cargo under deck						
General 511						
Bulk 512						A-436
Refrigerated cargo 513						
Dry cargo (in reefer space) 514						
Dry cargo (in liquid space) 515						
On deck cargo 516						
Liquid cargo in bulk 517		(Gals.)		(Gals.)		(Gals.)
Total						

19. Vessel activity in Foreign ports		DATE AND TIME OF—						TONS (2,240 lbs.)		HOURS IN PORT*	MA USE ONLY
		ARRIVAL			DEPARTURE						
(List ports in order of call)	Repaired (✓)	Month	Day	Hour	Month	Day	Hour	Discharged	Loaded		
1											
2											
3											
4											
5											
6											
7											
9											
10											
11											
12											
13											
14											
15											
16											

* Reasons for undue delay

20. PORT-TO-PORT DISTRIBUTION OF CARGO TO BE DISCHARGED IN THE UNITED STATES (Tons of 2,240 lbs.)										MA USE ONLY
MA USE ONLY										
Foreign ports of lading for cargo to be discharged at U. S. ports (List below in order of call)	United States Ports of Discharge (List across in order of call)									
OTHER THAN DEPARTMENT OF DEFENSE (Commercial)										
General cargo										
1										
2										
3										
4										
5										
6										
7										
8										
9										
10										
11										
12										
13										
14										
15										
16										
Bulk cargo (Specify commodity)										
1										
2										
3										
4										
DEPARTMENT OF DEFENSE CARGO										
1										
2										
3										

DRY CARGO VESSELS—INBOUND

INSTRUCTIONS FOR PREPARATION OF VESSEL UTILIZATION AND PERFORMANCE REPORT

(Form MA-7801—Dry Cargo Inbound)

An accurate Vessel Utilization and Performance Report (Form MA-7801—Dry Cargo Inbound) must be filed, in duplicate, with the Collector of Customs, for transmittal to the Maritime Administration, by the operator of every self-propelled dry cargo vessel of 500 or more net registered tons for each inward voyage in the foreign trade of the United States. Such requirements are in accordance with Federal Maritime Board General Order 39 and Section 212 (A) of Merchant Marine Act of 1936.

Form MA-7801 must be filed before midnight of the tenth day (not including Saturdays, Sundays, and holidays) *after Customs entry at the first United States port from a foreign port.*

Vessels entering a noncontiguous port (in Hawaii, Alaska, Puerto Rico, etc.) to depart for a continental United States port must file Form MA-7801 with the Collector of Customs at the noncontiguous port of entry and another complete report at the first continental port of arrival.

Form MA-7801 is required to be filed in triplicate for all voyages of merchant vessels operated by or for the account of the Department of Defense except vessels of the Military Sea Transportation Service (MSTS) nucleus fleet.

Vessels entering the United States with optional cargo destined to a coastal area other than that entered may file with the Collector of Customs at the port of entry, a preliminary report by completing items 1 through 11 and stating in item 13 when and where a final and complete report will be filed after the port of unlading of the optional cargo has been ascertained. In such cases, the responsibility for filing will remain at the port of entrance.

All cargo quantities shall be shown in long tons of 2,240 pounds shipping weight, including tare. Do not report fractions of a ton—show to the nearest ton.

Explanation of the items required to be reported on the Vessel Utilization and Performance Report Form MA-7801 is shown below:

Item 1. Line or Operator for This Voyage. Show the trade name of the line or operator—NOT the name of the operating agent. Show the nation in which the actual headquarters of the line or operator is situated.

Item 2. Owner of Vessel. Show the name of the owner of the vessel as recorded in the nation of documentation. *Nationality.* State the nation in which the owning organization or individual is granted permission to operate in foreign trade.

Item 3. Charterer for This Voyage. State the name of the organization or individual chartering the vessel on this voyage and name the nation in which such charterer is granted permission to operate in foreign trade.

Item 4. Name of Vessel. Insert name of vessel exactly as documented.

Item 5. Port of Entry. Indicate the United States port at which entry papers for the vessel were officially filed with the Collector of Customs.

Item 6. Date of Entry. Show the date that entry papers were filed with the Collector of Customs (not necessarily the date vessel arrived at port).

Item 7. Type of Vessel. Vessels with accommodations for 13 or more passengers shall be reported as combination vessels; vessels with accommodations for 12 or less passengers shall be reported as freight vessels; "other" types of vessels include car ferries or other special types.

Item 8. Flag of Registry. Indicate the nation in which the vessel is documented.

Item 9. Gross and Deadweight Tons. Report registered gross tonnage. Show deadweight for this voyage and indicate whether deadweight reported is tropical (T), summer (S), or winter (W).

Item 10. Type of Charter. Indicate the type of charter, if any, for this voyage, i. e., bareboat, time, etc.

Item 11. Type of Service for This Voyage. Indicate whether this voyage is in liner (berth) service. A scheduled berth sailing, known as liner service, is the type of service offered by regular line operators. The itineraries and sailing schedules of vessels in liner service are usually predetermined and fixed; other sailings, not on berth, include industrial or proprietary and all other services, such as unscheduled or tramp.

Item 12. Cargo on Board. Show as *"Grand total"* all cargo on board upon entering the first United States port. Under *"Department of Defense Cargo"* report the tonnage of cargoes including MSTS cargoes, transported for the United States Department of Defense responsibility irrespective of the kind of goods or terms of affreightment. Show under *"Oncarried"* cargoes originating in a foreign port that remain on board for further transportation to another foreign port without entering U. S. Customs custody. Under *"Domestic"* report cargoes originating at a United States port to be discharged at another United States port. *"Overcarried"* cargoes are those which were intended for discharge but have been retained on board due to unusual conditions, such as strikes, port impairment, etc.

Report as *"Commercial Cargo for U. S. discharge"* all cargo to be discharged from the vessel at United States ports on this voyage. Include *"intransit inbound"* as well as United States imports. Show separately the weight of *"mail and all other"* items not specifically indicated in foregoing categories, including passengers' automobiles and luggage.

Item 13. Inbound Port-to-Port Passenger Traffic in Order of United States Ports of Call. All vessels that carry passengers in the foreign trade of the United States are required to report this item. Show the port-to-port movement of passengers, and indicate the class of accommodation.

Designate top-class combination vessel accommodations as "first class"; middle class accommodations as "cabin class"; tourist class accommodations as "tourist class"; third class and any other as "other." Combination vessels having but one class shall be reported under the appropriate foregoing classification. Freighter passengers shall be reported as "other." Exclude accommodations occupied by vessel's personnel, such as entertainers, etc.

Include U. S. military personnel in the class of accommodations occupied, but show the number of U. S. military personnel as a total in the space provided. Report all personnel of the United States armed forces and also members of their families traveling only on Government order.

Passengers traveling on the same vessel for the entire round voyage shall be reported separately—that is, for example; New York to New York.

Show in the space provided the number of United States citizens debarking, and show citizens of all other nations in the space "All other."

"Oncarried" passengers are those that embark at a foreign port and remain aboard the vessel to debark at another foreign port.

Show the actual available passenger capacity of the vessel for this inbound voyage. Exclude accomodations occupied by vessel's personnel, such as entertainers, etc.

Item 14. On Board Clearing Last Foreign Port. A4-37

(a) Record the weight (in long tons) of water, stores, and permanent ballast, and show the deadweight capacity reserved for bunkers on this voyage—not necessarily the actual weight of bunkers. Permanent ballast remains with the vessel and is not discharged from time to time. Include stowed dunnage in "stores." Exclude water ballast.

(b) Indicate the cargo deadweight capacity for this voyage—ordinarily that is, deadweight as shown in 9 (b) minus the total shown in 14 (a).

Item 15. Bunkers Taken At. Show the foreign port or ports at which bunkers were taken aboard and the number of long tons taken at each port.

Item 16. Crew. Report all members of vessel personnel in the appropriate department as indicated on the form.

Item 17. Total Vessel Space Available for Cargo. Record in the appropriate spaces the cubic feet of space available for cargo when the vessel is clear of cargo. Show dry cargo, refrigerated cargo, and deep tank spaces separately. Report in cubic feet the capacity of those deep tanks used for dry cargo on this voyage. If deep tanks are not usable for dry cargo please indicate. Report in gallons the capacity of deep tanks available for liquid cargo on this voyage.

Item 18. Total Inbound Cargo. The purpose of item 18 is to record the weight and space utilization of the vessel as it enters the first United States port. The first column on left indicates the location of the cargo aboard the vessel and the headings provide for weight-space relationship of cargoes as stowed on board—NOT in the pile on dock. Segregate commercial and Department of Defense cargoes. Under the headings "Tons" report the actual gross shipping weight of the cargo including tare. Under "Space occupied" show the actual cubic space taken up by dry cargoes in the holds or deep tanks, including broken stowage. Show the actual number of gallons for liquid cargo in deep tanks.

Item 19. Vessel Activity in Foreign Ports. List all foreign ports in order of call since last clearing the United States. If the vessel was not in the United States foreign trade on the previous voyage, report port activity beginning with the first foreign port of lading on this inbound voyage.

Report each call, irrespective as to whether cargo was handled or not, and show the month, day and hour of arrival and departure, and the cargo discharged and loaded at each. (Show the nearest hour according to the 24-hour system, i. e., 12 midnight as 24, 1 a. m. as 1, 12 noon as 12, 1 p. m. as 13, 2 p. m. as 14, etc.).

If call was made for bunkers only, indicate by "bunkers" in the columns headed "Tons." If repairs were made to the ship, indicate in each instance the ports at which such activities occurred by a check in the column "Repaired." Compute and report hours in port. Under "Reasons for undue delay," explain briefly any unusual length of time in port, such as congestion, strikes, etc.

Item 20. Port-to-Port Distribution of Cargo to be Discharged in the United States. List foreign ports in the first column on left and United States ports in the heading in the order of call and show the total tons of cargo moving between them. Segregate and report separately "General Cargo" and "Bulk Cargo" for commercial account. Report under the heading "Department of Defense Cargo" all cargoes moved for United States Department of Defense responsibility. "Bulk cargo," for the purposes of this report, is defined as those commodities moving in bulk, without mark or count. Indicate the bulk commodity being shipped.

THE MERCHANT MARINE ACT OF 1936

"Sec. 212 (A). The operator of a vessel in waterborne foreign commerce of the United States shall file at such times and in such manner as the Secretary of Commerce may prescribe by regulations, such report, account, record, or memorandum relating to the utilization and performance of such vessel in commerce of the United States, as the Secretary may determine to be necessary or desirable in order to carry out the purposes and provisions of this Act, as amended. Such report, account, record, or memorandum shall be signed and verified in accordance with regulations prescribed by the Secretary. An operator who does not file the report, account, record, or memorandum as required by this Section and the regulations issued hereunder, shall be liable to the United States in a penalty of $50 for each day of such violation. The amount of any penalty imposed for any violation of this section upon the operator of any vessel shall constitute a lien upon the vessel involved in the violation, and such vessel may be libeled therefor in the district court of the United States for the district in which it may be found. The Secretary of Commerce may, in his discretion, remit or mitigate any penalty imposed under this section on such terms as he may deem proper."

Comm-DC 21880

Form MA-7102
(Rev. 12-56)

[illegible]
MARITIME ADMINISTRATION
Washington 25, D. C.

VESSEL UTILIZATION AND PERFORMANCE REPORT

CARGO VESSEL CLEARING UNITED STATES PORTS IN FOREIGN TRADE

DRY CARGO—OUTBOUND

Budget Bureau No. [illegible]

MA USE ONLY

4. Name of vessel

5. Port of clearance

6. Date of clearance — Month — Day — Year

		MA USE ONLY
1. Line or operator for this voyage	Name	
	Nationality	
2. Owner of vessel	Name	
	Nationality	
3. Charterer for this voyage	Name	
	Nationality	

7. Type of vessel ☐ Freighter ☐ Combination ☐ Other

8. Flag of registry

9. (a) Gross tons

9. (b) Deadweight for this voyage — T — S — W

10. Type of charter for this voyage ☐ Bareboat ☐ Time ☐ Other ☐ None

11. Type of service for this voyage ☐ Scheduled berth ☐ Other

12. Cargo on board	Tons (2,240 lbs.)
Department of Defense cargo	
U. S. foreign trade 100	
U. S. noncontiguous 102	
Oncarried (Foreign) 201	
Domestic 202	
Overcarried 203	

12. Cargo on board (Continued)	Tons (2,240 lbs.)
Commercial cargo for Foreign discharge . . . 300	
All cargo subtotal . . . . . (100 to 300)	
Mail and other 501	A438
Grand total . . . . . (100 to 501)	

13. OUTBOUND PORT-TO-PORT PASSENGER TRAFFIC IN ORDER OF UNITED STATES PORTS OF CALL

United States ports of embarkation	Foreign ports of debarkation		Number of passengers including military personnel: Total	1st	Cabin	Tourist	Other	U. S. Military personnel on board	MA USE ONLY	
		1								
		1								
		1								
		1								
		1								
		1								
		1								
		1								
		1								
		1								
		1								
		1								
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		1								
		1								
		1								
		1								
		1								
		1								
		1								
		1								
		1								
United States ports of embarkation	United States ports of debarkation									
		1								
		1								
		1								
		1								
		1								
		1								
		1								
Total passengers embarking		2								
United States citizens		3								
All other		4								
Oncarried passengers		5								
Total passengers on board		6								
Passenger capacity of vessel for this voyage		7								

Under penalty of law, I hereby certify this to be an accurate and complete report of the utilization and performance of this vessel on this voyage.

Reporting company, Agent, Broker or other authorized representative

Signed by

Address

Date

Title

MA USE ONLY	1	2	3	4	5	6	7	8

14. (a) On board clearing last United States port	Tons (2,240 lbs.)	15. Bunkers taken at (Name of U. S. port)	Tons (2,240 lbs.)	16. Crew (including Captain and Officers) Department	Number
Bunkers* ✓				Deck	
Water ✓				Engine	
Stores				Steward	
Permanent ballast					
Total					

14. (b) Cargo deadweight capacity for this voyage (item 9 (b) less Total item 14 (a))	

17. Total vessel space available for cargo

Dry cargo	(cu. ft.)	
	Deep tanks	(cu. ft.)
Refrigerated cargo	(cu. ft.)	
	Deep tanks	(gallons)

*Total Bunker capacity reserved for use on this outbound voyage

LADING OF VESSEL—ON BOARD CLEARING LAST UNITED STATES PORT

18. Total outbound cargo (Include weight of all cargo shown as subtotal in item 12, include broken stowage in "Space occupied")	Total		Commercial		Defense	
	Tons (2,240 lbs.)	Space occupied (cu. ft.)	Tons (2,240 lbs.)	Space occupied (cu. ft.)	Tons (2,240 lbs.)	Space occupied (cu. ft.)
Dry cargo under deck						
General 511						
Bulk 512						
Refrigerated cargo 513						
Dry cargo (in reefer space) 514						4-439
Dry cargo (in liquid space) 515						
On deck cargo 516		(Gals.)		(Gals.)		(Gals.)
Liquid cargo in bulk 517						
Total						

19. Vessel activity in U. S. ports (List ports in order of call)	Repaired (✓)	Date and time of— Arrival Month	Arrival Day	Arrival Hour	Departure Month	Departure Day	Departure Hour	Tons (2,240 lbs.) Discharged	Tons (2,240 lbs.) Loaded	Hours in port*	MA USE ONLY
1											
2											
3											
4											
5											
6											
7											
8											
9											
10											
11											
12											
13											
14											
15											
16											

* Reasons for undue delay

20. PORT-TO-PORT DISTRIBUTION OF CARGO LADEN IN THE UNITED STATES (Tons of 2,240 lbs.)

Foreign ports of discharge for cargo laden at U. S. ports (List below in order of call)	United States Ports of lading (List across in order of call)									MA USE
MA USE ONLY										
OTHER THAN DEPARTMENT OF DEFENSE (Commercial) General cargo										
1										
2										
3										
4										
5										
6										
7										
8										
9										
10										
11										
12										
13										
14										
15										
16										
Bulk cargo (Specify commodity)										
1										
2										
3										
4										
DEPARTMENT OF DEFENSE CARGO										
1										
2										

DRY CARGO VESSELS—OUTBOUND

INSTRUCTIONS FOR PREPARATION OF VESSEL UTILIZATION AND PERFORMANCE REPORT

(Form MA-7802—Dry Cargo Outbound)

An accurate Vessel Utilization and Performance Report (Form MA-7802—Dry Cargo Outbound) must be filed, in duplicate, with the Collector of Customs, for transmittal to the Maritime Administration, by the operator of every self-propelled dry cargo vessel of 500 or more net registered tons for each outward voyage in the foreign trade of the United States. Such requirements are in accordance with Federal Maritime Board General Order 39 and Section 212 (A) of Merchant Marine Act of 1936.

Form MA-7802 must be filed before midnight of the tenth day (not including Saturdays, Sundays and holidays) *after Customs clearance at the last United States port for a foreign port.*

Vessels departing in foreign trade from a continental United States port for a noncontiguous port (in Hawaii, Alaska, Puerto Rico, etc.) must file Form MA-7802 with the Collector of Customs at the continental port of departure and another complete report at the last noncontiguous port of clearance.

Form MA-7802 is required to be filed in triplicate for all voyages of merchant vessels operated by or for the account of the Department of Defense except vessels of the Military Sea Transportation Service (MSTS) nucleus fleet.

All cargo quantities shall be shown in long tons of 2,240 pounds shipping weight, including tare. Do not report fractions of a ton—show to the nearest ton.

Explanation of the items required to be reported on the Vessel Utilization and Performance Report Form MA-7802 is shown below:

Item 1. Line or Operator for This Voyage. Show the trade name of the line or operator—NOT the name of the operating agent. Show the nation in which the actual headquarters of the line or operator is situated.

Item 2. Owner of Vessel. Show the name of the owner of the vessel as recorded in the nation of documentation. *Nationality.* State the nation in which the owning organization or individual is granted permission to operate in foreign trade.

Item 3. Charterer for This Voyage. State the name of the organization or individual chartering the vessel on this voyage and name the nation in which such charterer is granted permission to operate in foreign trade.

Item 4. Name of Vessel. Insert name of vessel exactly as documented.

Item 5. Port of Clearance. Indicate the United States port at which clearance papers for the vessel were officially filed with the Collector of Customs.

Item 6. Date of Clearance. Show the date that clearance papers were filed with the Collector of Customs (not necessarily the date vessel departed from port).

Item 7. Type of Vessel. Vessels with accommodations for 13 or more passengers shall be reported as combination vessels; vessels with accommodations for 12 or less passengers shall be reported as freight vessels; "other" types of vessels include car ferries or other special types.

Item 8. Flag of Registry. Indicate the nation in which the vessel is documented.

Item 9. Gross and Deadweight Tons. Report registered gross tonnage. Show deadweight for this voyage and indicate whether deadweight reported is tropical (T), summer (S), or winter (W).

Item 10. Type of Charter. Indicate the type of charter, if any, for this voyage, i. e., bareboat, time, etc.

Item 11. Type of Service for This Voyage. Indicate whether this voyage is in liner (berth) service. A scheduled berth sailing, known as liner service, is the type of service offered by regular line operators. The itineraries and sailing schedules of vessels in liner service are usually predetermined and fixed; other sailings, not on berth, include industrial or proprietary and all other services, such as unscheduled or tramp.

Item 12. Cargo on Board. Show as "*Grand total*" all cargo on board upon clearing the last United States port. Under "*Department of Defense Cargo*" report the tonnage of cargoes transported for the United States Department of Defense responsibility irrespective of the kind of goods or terms of affreightment. Show under "*Oncarried*" cargoes originating in a foreign port that remain on board for further transportation to another foreign port without entering the United States Customs custody. Under "*Domestic*" report cargoes originating at a United States port to be discharged at another United States port. "*Overcarried*" cargoes are those which were intended for discharge but have been retained on board due to unusual conditions, such as strikes, port impairment, etc.

Report as "*Commercial Cargo for Foreign Discharge*" all cargo laden on the vessel at United States ports on this voyage. Include "*intransit outbound*" as well as United States exports. Show separately the weight of "*mail and all other*" items not specifically indicated in foregoing categories, including passengers' automobiles and luggage.

Item 13. Outbound Port-to-Port Passenger Traffic in Order of United States Ports of Call. All vessels that carry passengers in the foreign trade of the United States are required to report this item. Show the port-to-port movement of passengers and indicate the class of accommodation.

Designate top-class combination vessel accommodations as "first class"; middle class accommodations as "cabin class"; tourist class accommodations as "tourist class"; third class and any other as "other." Combination vessels having but one class shall be reported under the appropriate foregoing classification. Freighter passengers shall be reported as "other." Exclude accommodations occupied by vessel's personnel, such as entertainers, etc.

Include United States military personnel in the class of accommodations occupied, but show the number of United States military personnel as a total in the space provided. Report all personnel of the United States armed forces and also members of their families traveling only on Government order.

Passengers traveling on the same vessel for the entire round voyage shall be reported separately—that is, for example, New York to New York.

Show in the space provided the number of United States citizens embarking, and show citizens of all other nations in the space "All other."

"Oncarried" passengers are those that embark at a foreign port and remain aboard the vessel to debark at another foreign port.

Show the actual available passenger capacity of the vessel for this outbound voyage. Exclude accommodations occupied by vessel's personnel, such as entertainers, etc.

Item 14. On Board Clearing Last United States Port. A-440

(a) Record the weight (in long tons) of water, stores, and permanent ballast, and show the deadweight capacity reserved for bunkers on this voyage—not necessarily the actual weight of bunkers. Permanent ballast remains with the vessel and is not discharged from time to time. Include stowed dunnage in "stores." Exclude water ballast.

(b) Indicate the cargo deadweight capacity for this voyage—ordinarily that is, deadweight as shown in 9 (b) minus the total shown in 14 (a).

Item 15. Bunkers Taken At. Show the United States port or ports at which bunkers were taken aboard and the number of long tons taken at each port.

Item 16. Crew. Report all members of vessel personnel in the appropriate department as indicated on the form.

Item 17. Total Vessel Space Available for Cargo. Record in the appropriate spaces the cubic feet of space available for cargo when the vessel is clear of cargo. Show dry cargo, refrigerated cargo, and deep tank spaces separately. Report in cubic feet the capacity of those deep tanks used for dry cargo on this voyage. If deep tanks are not usable for dry cargo please indicate. Report in gallons the capacity of deep tanks available for liquid cargo on this voyage.

Item 18. Total Outbound Cargo. The purpose of item 18 is to record the weight and space utilization of the vessel as it clears the last United States port. The first column on left indicates the location of the cargo aboard the vessel and the headings provide for weight-space relationship of cargoes as stowed on board—NOT in the pile on dock. Segregate commercial and Department of Defense cargoes. Under the headings "Tons" report the actual gross shipping weight of the cargo including tare. Under "Space occupied" show the actual cubic space taken up by dry cargoes in the holds or deep tanks, including broken stowage. Show the actual number of gallons for liquid cargo in deep tanks.

Item 19. Vessel Activity in United States Ports. List all United States ports in order of call since entry in the United States. If the vessel was not in the United States foreign trade on the previous voyage, report port activity beginning with the first United States port of lading on this outbound voyage.

Report each call, irrespective as to whether cargo was handled or not, and show the month, day and hour of arrival and departure, and the cargo discharged and loaded at each. (Show the nearest hour according to the 24-hour system, i. e., 12 midnight as 24, 1 a.m. as 1, 12 noon as 12, 1 p.m. as 13, 2 p.m. as 14, etc.).

If call was made for bunkers only, indicate by "bunkers" in the columns headed "Tons." If repairs were made to the ship, indicate in each instance the ports at which such activities occurred by a check in the column "Repaired." Compute and report hours in port. Under "Reasons for undue delay," explain briefly any unusual length of time in port, such as congestion, strikes, etc.

Item 20. Port-to-Port Distribution of Cargo Laden in the United States. List foreign ports in the first column on left and United States ports in the heading in the order of call and show the total tons of cargo moving between them. Segregate and report separately "General Cargo" and "Bulk Cargo" for commercial account. Report under the heading "Department of Defense Cargo" all cargoes moved for United States Department of Defense responsibility. "Bulk cargo," for the purposes of this report, is defined as those commodities moving in bulk, without mark or count. Indicate the bulk commodity being shipped.

THE MERCHANT MARINE ACT OF 1936

"Sec. 212 (A). The operator of a vessel in waterborne foreign commerce of the United States shall file at such times and in such manner as the Secretary of Commerce may prescribe by regulations, such report, account, record, or memorandum relating to the utilization and performance of such vessel in commerce of the United States, as the Secretary may determine to be necessary or desirable in order to carry out the purposes and provisions of this Act, as amended. Such report, account, record, or memorandum shall be signed and verified in accordance with regulations prescribed by the Secretary. An operator who does not file the report, account, record, or memorandum as required by this Section and the regulations issued hereunder, shall be liable to the United States in a penalty of $50 for each day of such violation. The amount of any penalty imposed for any violation of this section upon the operator of any vessel shall constitute a lien upon the vessel involved in the violation, and such vessel may be libeled therefor in the district court of the United States for the district in which it may be found. The Secretary of Commerce may, in his discretion, remit or mitigate any penalty imposed under this section on such terms as he may deem proper."

VESSEL UTILIZATION AND PERFORMANCE REPORT
GENERAL INSTRUCTIONS

1. The Vesse[illegible] ation and Performance Report (Form MA-578) must be filed in duplicate with [illegible] lector of Customs for transmittal to the Maritime Administration. An accurate form must be completed by the operator of every [illegible] operated or [illegible] of passenger vessel, one thousand [illegible] gross registered tons, engaged in foreign trade with the United States. Such requirements are in accordance with the Maritime Administration General Order 39 and Section 212(A) of the Merchant Marine Act of 1936.

2. This form must be filed before midnight of the 15th day (not including Saturdays, Sundays, or holidays) after departure of the vessel from the last United States port when filing a combination or outbound form.

3. The combination form should include activities of the vessel prior to arrival as well as the activities of the vessel from its arrival at the first United States port through the last United States port of clearance. If two or more agents are involved in a voyage and the filing of a combination form is desired, the inbound agent will be responsible for furnishing the inbound information to the outbound agent who will be responsible for filing.

4. If the operator elects to file separate inbound and outbound forms, he must file the inbound portion before midnight of the 15th working day after arrival at the first United States port of entry. Inbound forms are required if the vessel is to remain in the U.S. for 45 days or more.

5. Form MA-578 is required to be filed in duplicate for all voyages of merchant vessels operated by, or for the account of, the Department of Defense except vessels of the Military Sea Transportation Service (MSTS) nucleus fleet.

6. Consider Hawaii, Alaska, and Puerto Rico as the first or last U.S. port when entering or clearing.

7. No interim report will be required for side trips when the vessel is to return to the United States before proceeding foreign. Example: Seattle to Vancouver to Seattle or New York to Mexico to Los Angeles. However, all activity and cargo transactions must be reflected on the outbound or combination report (Form MA-578). A side trip is defined as calling at a foreign port before final United States clearance.

8. If additional reporting space is required for any item, a separate Form MA-578 should be used. Items 1, 2, and 5 should be repeated and the form marked "continuation sheet."

9. Any company wishing to file punched cards in place of the Form MA-578 or certain items on the form may do so by obtaining special permission from the Maritime Administration. Companies securing this permission will file directly with the Maritime Administration, Washington, D.C., and will be given 30 days to file after departure of the vessel from the last United States port.

10. The term "voyage" for the purpose of this report means "A trip beginning with the first U.S. entrance and completing with the final U.S. clearance."

A44i

Name of vessel exactly as documented.

State the corporate name and the common name of the operator, if different.

Indicate the operator's nationality.

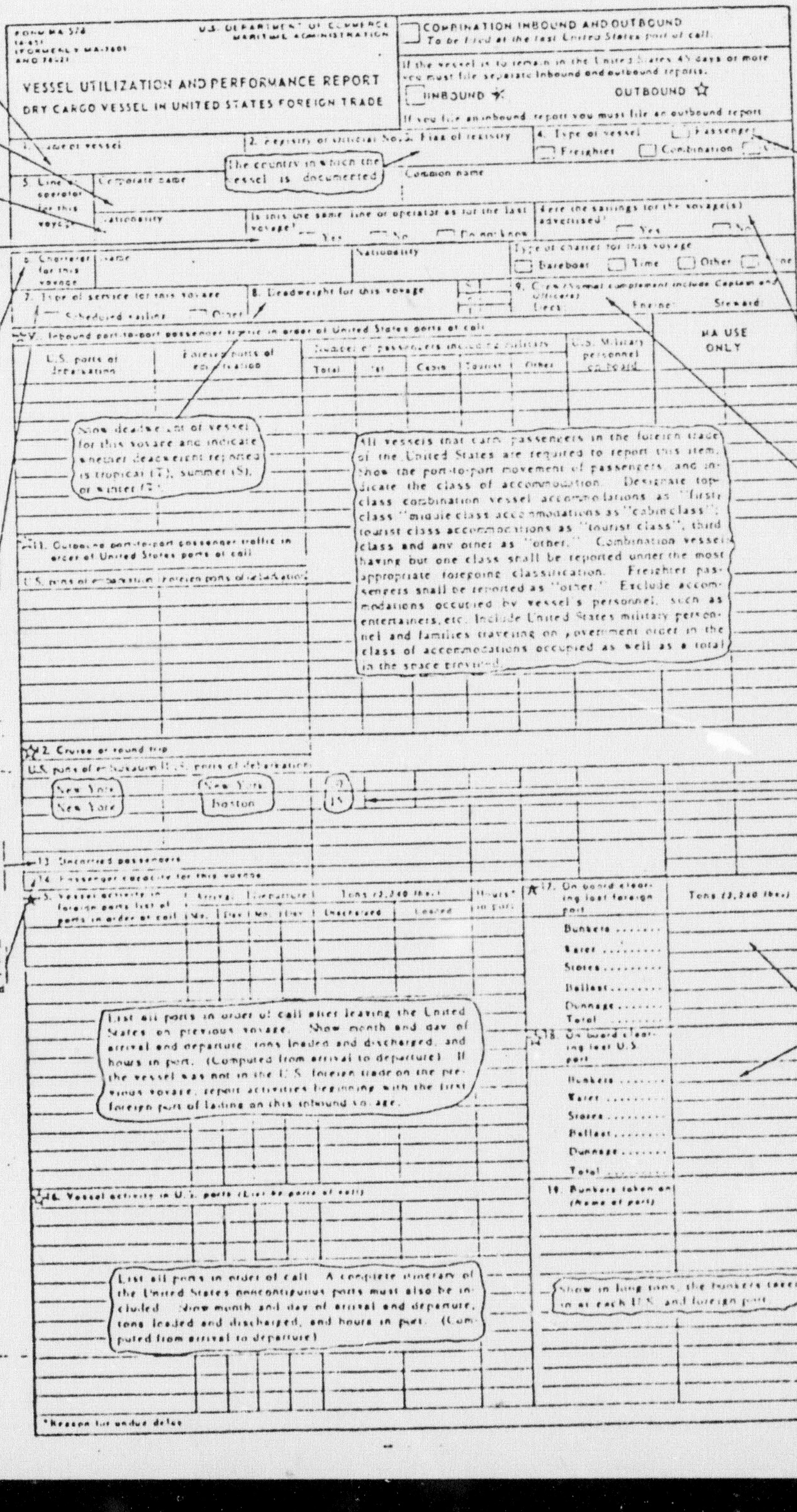
Indicate whether or not this is the same operator as for the last voyage.

State the name of the organization or individual chartering the vessel for this voyage. Show the co[illegible] where the charter[illegible] incorporated or licensed. Indicate the type of charter, (if any).

Indicate whether this voyage is in liner (berth) service. A scheduled berth sailing known as liner service, is the type of service offered by regular liner operators. The itineraries and sailing schedules of vessels in liner service are usually predetermined and fixed. Such sailings are usually advertised. Other sailings, not on berth, include industrial or proprietory and all other services such as unscheduled or tramp.

Indicate number by total and type of accommodations. "Uncarried" passengers are those that embark at a foreign port and remain aboard the vessel to debark at another foreign port.

Indicate vessel total capacity and capacities by type of accommodations for the outbound voyage.



FORM MA 578
(4-65)
(FORMERLY MA-7601
AND 74-21)

U.S. DEPARTMENT OF COMMERCE
MARITIME ADMINISTRATION

VESSEL UTILIZATION AND PERFORMANCE REPORT
DRY CARGO VESSEL IN UNITED STATES FOREIGN TRADE

☐ COMBINATION INBOUND AND OUTBOUND
To be filed at the last United States port of call.

If the vessel is to remain in the United States 45 days or more you must file separate inbound and outbound reports.

☐ INBOUND ✫ OUTBOUND ☆

If you file an inbound report you must file an outbound report

1. Name of vessel
2. Registry or official No.
3. Flag of registry

The country in which the vessel is documented

4. Type of vessel ☐ Passenger ☐ Freighter ☐ Combination ☐

5. Line or operator for this voyage: Corporate name — Common name — Nationality

Is this the same line or operator as for the last voyage? ☐ Yes ☐ No ☐ Do not know

Were the sailings for the voyage(s) advertised? ☐ Yes ☐ No

6. Charterer for this voyage: Name — Nationality

Type of charter for this voyage ☐ Bareboat ☐ Time ☐ Other ☐ None

7. Type of service for this voyage ☐ Scheduled sailing ☐ Other

8. Deadweight for this voyage

9. Crew (Normal complement include Captain and Officers) Deck — Engine — Steward

10. Inbound port-to-port passenger traffic in order of United States ports of call

U.S. ports of debarkation	Foreign ports of embarkation	Number of passengers including military: Total	1st	Cabin	Tourist	Other	U.S. Military personnel on board

MA USE ONLY

Show deadweight of vessel for this voyage and indicate whether deadweight reported is tropical (T), summer (S), or winter (W).

All vessels that carry passengers in the foreign trade of the United States are required to report this item. Show the port-to-port movement of passengers, and indicate the class of accommodation. Designate top-class combination vessel accommodations as "first class" middle class accommodations as "cabin class", tourist class accommodations as "tourist class", third class and any other as "other." Combination vessels having but one class shall be reported under the most appropriate foregoing classification. Freighter passengers shall be reported as "other." Exclude accommodations occupied by vessel's personnel, such as entertainers, etc. Include United States military personnel and families traveling on government order in the class of accommodations occupied as well as a total in the space provided.

11. Outbound port-to-port passenger traffic in order of United States ports of call

U.S. ports of embarkation	Foreign ports of debarkation

12. Cruise or round trip

U.S. ports of embarkation	U.S. ports of debarkation	
New York	New York	10
New York	Boston	15

13. Uncarried passengers

14. Passenger capacity for this voyage

15. Vessel activity in foreign ports list of ports in order of call — Arrival: Mo. Day — Departure: Mo. Day — Tons (2,240 lbs.): Discharged, Loaded — Hours* in port

List all ports in order of call after leaving the United States on previous voyage. Show month and day of arrival and departure, tons loaded and discharged, and hours in port. (Computed from arrival to departure) If the vessel was not in the U.S. foreign trade on the previous voyage, report activities beginning with the first foreign port of lading on this inbound voyage.

16. Vessel activity in U.S. ports (List by ports of call)

List all ports in order of call. A complete itinerary of the United States noncontiguous ports must also be included. Show month and day of arrival and departure, tons loaded and discharged, and hours in port. (Computed from arrival to departure)

17. On board clearing last foreign port — Tons (2,240 lbs.)

Bunkers ....
Water ....
Stores ....
Ballast ....
Dunnage ....
Total ....

18. On board clearing last U.S. port

Bunkers ....
Water ....
Stores ....
Ballast ....
Dunnage ....
Total ....

19. Bunkers taken on (Name of port)

Show in long tons, the bunkers taken on at each U.S. and foreign port.

*Reason for undue delay

Vessels with accommodations for less than 13 passengers shall be reported as freighters.

Vessels with accommodations for 13 to 99 passengers shall be reported as combination vessels.

Vessels with accommodations for 100 or more passengers shall be reported as passenger vessels.

Indicate whether the sailing was or was not advertised. Advertising in this instance means that a notice of the sailing has been published prior to sailing in newspaper(s) or periodical(s) such as Journal of Commerce, Gulf Shipping Guide, Pacific Shippers, etc.

Report all members of normal crew in the appropriate department as indicated on the form.

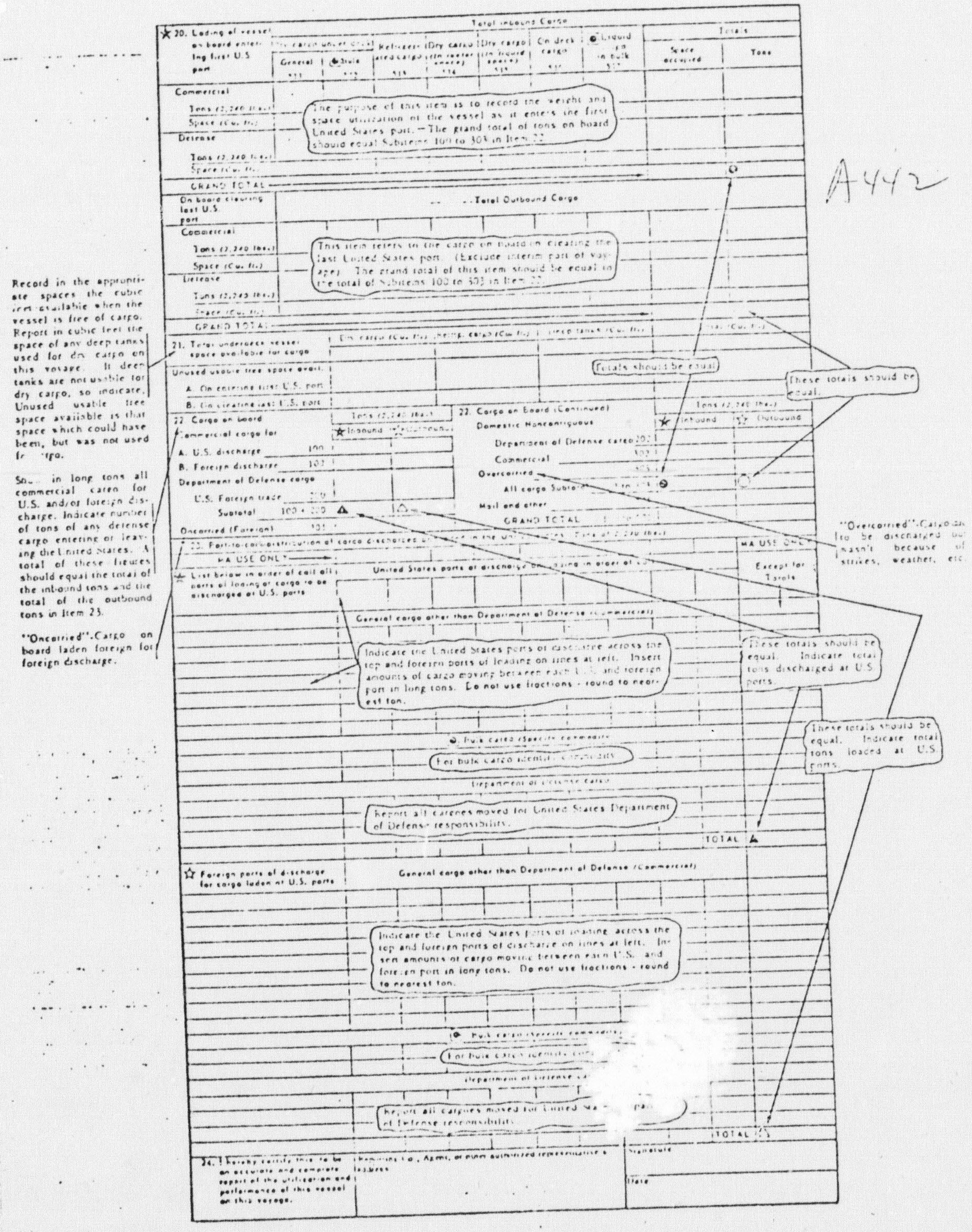
Insert the number of passengers debarking. If more than one port of debarkation for any port of embarkation, indicate number of passengers by separate item entry. (See illustration covering 25 passengers embarking in New York with 10 debarking in New York and 15 in Boston.)

Record the weight (in long tons) of bunkers, water, stores, ballast (exclude water ballast) and dunnage on board vessel clearing last foreign port or last United States port. Use estimates where necessary.

FORM MA 578 (4-65)

"Section 212(A' [illegible] operator of a vessel in waterborne foreign commerce of the United States s [illegible] at such times and in such manner as the Secretary of Com- erce may presc. [illegible] regulations, such report, account, record, or memorandum relating to the utili [illegible] commerce of the United States, as the Secretary may determine to be necessary or desirable in order to carry out the purposes and provisions of this Act, as amended. Such report, account, record, or memorandum shall be signed and verified in accordance with regulations prescribed by the Secretary. An operator who does not file the report, account, record, or memorandum as required by this Section and the regulations issued hereunder, shall be liable to the United States in a penalty of $50 for each day of such violation. The amount of any penalty imposed for any violation of this Section upon the operator of any vessel shall constitute a lien upon the vessel involved in the violation, and such vessel may be libeled therefor in the district court of the United States for the district in which it may be found. The Secretary of Commerce may, in his discretion, remit or mitigate any penalty imposed under this Section on such terms as he may deem proper."

A442



★ 20. Loading of vessel on board entering first U.S. port

Total inbound Cargo

	Dry cargo under deck: General 511	Dry cargo under deck: ● Stale 512	Refrigerated cargo 513	Dry cargo (in reefer space) 514	Dry cargo (in liquid space) 515	On deck cargo 516	● Liquid cargo in bulk 517	Totals: Space occupied	Totals: Tons
Commercial									
Tons (2,240 lbs.)									
Space (Cu. ft.)									
Defense									
Tons (2,240 lbs.)									
Space (Cu. ft.)									
GRAND TOTAL									○

The purpose of this item is to record the weight and space utilization of the vessel as it enters the first United States port. — The grand total of tons on board should equal Subitems 100 to 303 in Item 22.

On board clearing last U.S. port — Total Outbound Cargo

Commercial									
Tons (2,240 lbs.)									
Space (Cu. ft.)									
Defense									
Tons (2,240 lbs.)									
Space (Cu. ft.)									
GRAND TOTAL									

This item refers to the cargo on board on clearing the last United States port. (Exclude interim part of voyage) The grand total of this item should be equal to the total of Subitems 100 to 303 in Item 22.

Record in the appropriate spaces the cubic feet available when the vessel is free of cargo. Report in cubic feet the space of any deep tanks used for dry cargo on this voyage. If deep tanks are not usable for dry cargo, so indicate. Unused usable free space available is that space which could have been, but was not used fr[illegible] cargo.

21. Total underdeck vessel space available for cargo	Dry cargo (Cu. ft.)	Refrig. cargo (Cu. ft.)	Deep tanks (Cu. ft.)	Total (Cu. ft.)
Unused usable free space avail.				
A. On entering first U.S. port				
B. On clearing last U.S. port				

Totals should be equal

These totals should be equal.

Show in long tons all commercial cargo for U.S. and/or foreign discharge. Indicate number of tons of any defense cargo entering or leaving the United States. A total of these figures should equal the total of the inbound tons and the total of the outbound tons in Item 23.

"Oncarried"-Cargo on board laden foreign for foreign discharge.

22. Cargo on board		Tons (2,240 lbs.): ★ Inbound	Tons (2,240 lbs.): ☆ Outbound
Commercial cargo for			
A. U.S. discharge	100		
B. Foreign discharge	101		
Department of Defense cargo			
U.S. Foreign trade	200		
Subtotal	100 + 200	▲	△
Oncarried (Foreign)	101		

22. Cargo on Board (Continued)		Tons (2,240 lbs.): ★ Inbound	Tons (2,240 lbs.): ☆ Outbound
Domestic Noncontiguous			
Department of Defense cargo	301		
Commercial	302		
Overcarried	303		
All cargo Subtotal	100 to 303	●	○
Mail and other			
GRAND TOTAL			

"Overcarried"-Cargo scheduled to be discharged but wasn't because of strikes, weather, etc.

23. Port-to-port distribution of cargo discharged or loaded in the United States. (Tons of 2,240 lbs.)

MA USE ONLY

MA USE ONLY — Except for Totals

★ List below in order of call all ports of loading of cargo to be discharged at U.S. ports

United States ports of discharge (in order of call)

General cargo other than Department of Defense (Commercial)

Indicate the United States ports of discharge across the top and foreign ports of loading on lines at left. Insert amounts of cargo moving between each U.S. and foreign port in long tons. Do not use fractions - round to nearest ton.

● Bulk cargo (Specify commodity)

For bulk cargo identify commodity

Department of Defense cargo

Report all cargoes moved for United States Department of Defense responsibility.

TOTAL ▲

These totals should be equal. Indicate total tons discharged at U.S. ports.

These totals should be equal. Indicate total tons loaded at U.S. ports.

☆ Foreign ports of discharge for cargo laden at U.S. ports

General cargo other than Department of Defense (Commercial)

Indicate the United States ports of loading across the top and foreign ports of discharge on lines at left. Insert amounts of cargo moving between each U.S. and foreign port in long tons. Do not use fractions - round to nearest ton.

● Bulk cargo (Specify commodity)

For bulk cargo identify com[illegible]

Department of Defense c[illegible]

Report all cargoes moved for United Sta[illegible] [illegible]part[illegible] of Defense responsibility.

TOTAL △

24. I hereby certify this to be an accurate and complete report of the utilization and performance of this vessel on this voyage.	[illegible] Co., Agent, or other authorized representative & address	Signature Date

Legends

- ● Denotes where figures or totals should be equal.
- ▲ Denotes where figures or totals should be equal.
- ○ Denotes where figures or totals should be equal.
- △ Denotes where figures or totals should be equal.

- ★ For inbound items.
- ☆ For outbound items.
- [●] If there is an entry under bulk cargo (Item 23), there should be a figure in one or both of the items in No. 20 (512/517)

VESSEL UTILIZATION AND PERFORMANCE REPORT
GENERAL INSTRUCTIONS

1. The Vessel Utilization and Performance Report (Form MA-578) must be filed in duplicate with the District Director of Customs for transmittal to the Maritime Administration. An accurate report must be completed by the operator of every self-propelled dry cargo or passenger vessel of one thousand (1,000) or more gross registered tons, engaged in foreign trade with the United States. Such requirements are in accordance with the Maritime Administration General Order 37 and Section 212 A) of the Merchant Marine Act of 1936.

2. Form MA-578, INBOUND must be filed before midnight of the 15th day (not including Saturdays, Sundays, or holidays) after Customs entry, at the first United States port from a foreign port.

3. Form MA-578, OUTBOUND must be filed before midnight of the 15th day (not including Saturdays, Sundays, or holidays) after Customs clearance at the last United States port for a foreign port.

4. Form MA-578, COMBINATION INBOUND AND OUTBOUND may be filed ONLY by companies which have obtained special permission from the Maritime Administration, Washington, D.C. The combination form will have the same 15 day filing period as the separate forms. Requests should be made only by regular companies wishing to file all reports for a carrier, for example, a scheduled berth operator filing all reports from a central reporting office. Separate inbound and outbound reports must be filed for irregular carriers and for lines filing reports through different agents at various ports. Companies obtaining permission to file combination reports will be responsible for the data required of every inbound and outbound voyage by the subject carrier, and liable to the penalties incurred for missing reports at any port of first entry or final clearance. If the vessel is to remain in the United States 45 days or more you must file separate inbound and outbound reports.

5. Form MA-578 is required to be filed in duplicate for all voyages of merchant vessels operated by, or for the account of, the Department of Defense except vessels of the Military Sea Transportation Service (MSTS) nucleus fleet.

6. Consider Hawaii, Alaska, and Puerto Rico as the first or last U.S. port when entering or clearing.

7. "Interim reports" will be required for side trips when vessel is to return to United States before final U.S. clearance. Interim reports may omit answering items through 23.

A "side trip" is defined as a call at a foreign port prior to final United States clearance, for example, Seattle to Vancouver, B.C., to Seattle, or New York to Mexico to Los Angeles.

8. If additional reporting space is required for any item, a separate Form MA should be used. Items 1, 2, 3, and 5 should be repeated and the form marked "continuation sheet."

9. Any company wishing to file punched cards in place of the Form MA-578 or certain items on the form may do so by obtaining special permission from the Maritime Administration. Companies securing this permission will file directly with the Maritime Administration, Washington, D.C., and will be given 30 days to file after departure of the vessel from the last United States port.

10. The term "voyage" for the purpose of this report means "A trip beginning with the first U.S. entrance and completing with the final U.S. clearance."

Name of vessel exactly as documented.

State the common corporate name and the common name of the operator.

Indicate the operator's nationality.

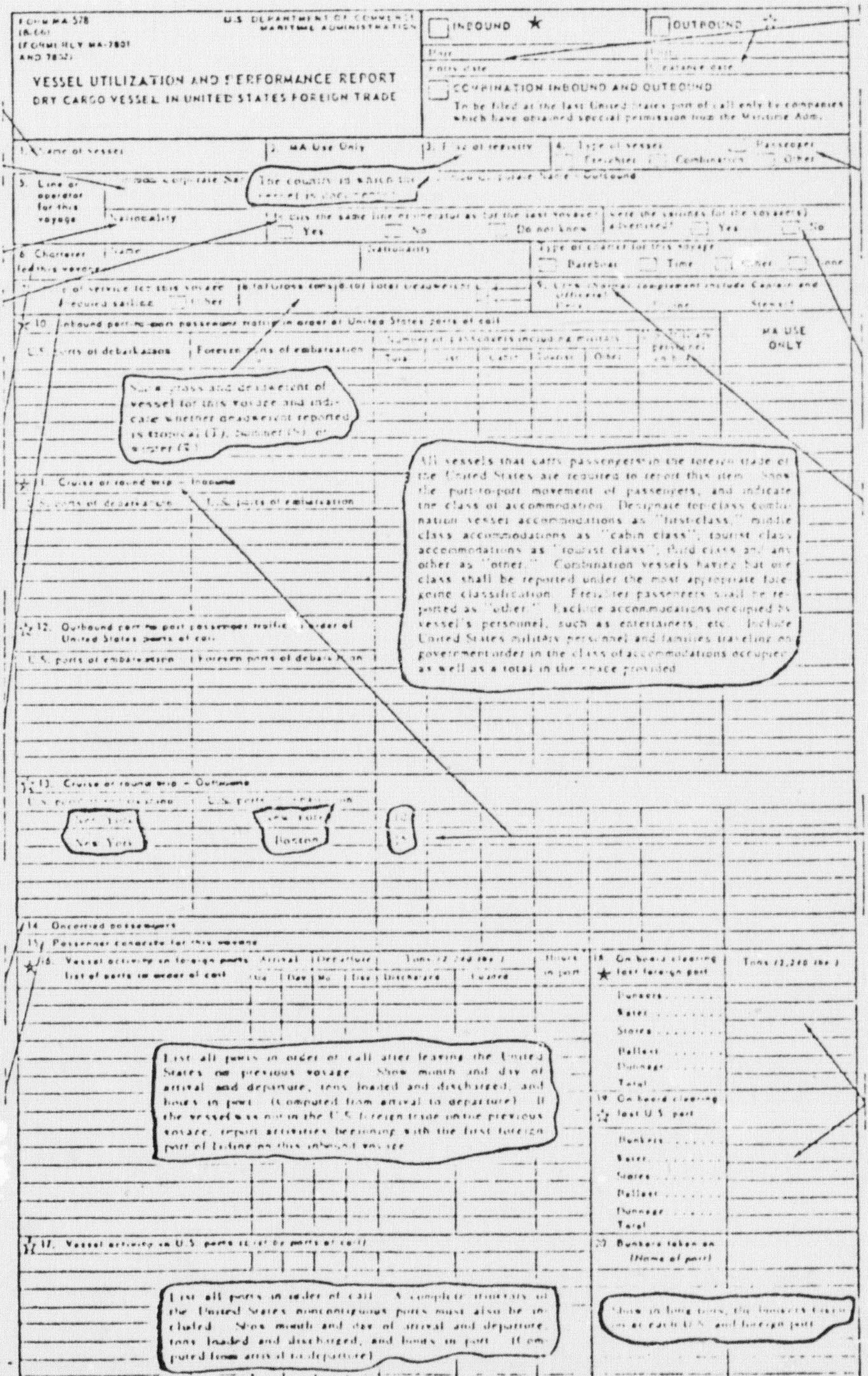
Indicate whether or not this is the same operator as for the last voyage.

State the name of the organization or individual chartering the vessel for this voyage. Show the country where the charterer is incorporated or licensed. Indicate the type of charter, (if any). And show both "in" and "out" charterer if different or of different nationality.

Indicate whether this voyage is in liner (berth) service. A scheduled berth sailing known as liner service, is the type of service offered by regular liner operators. The itineraries and sailing schedules of vessels in liner service are usually predetermined and fixed. Such sailings are usually advertised. Other sailings, not on berth include industrial or proprietory and all other services such as unscheduled or tramp. Indicate if service is different In and Out.

Indicate number by total and type of accommodations. "Oncarried" passengers are those that embark at a foreign port and remain aboard the vessel to debark at another foreign port.

Indicate vessel total capacity and capacities by type of accommodations for the outbound voyage.


FORM MA-578
(8-66)
(FORMERLY MA-7801 AND 7802)
U.S. DEPARTMENT OF COMMERCE
MARITIME ADMINISTRATION
VESSEL UTILIZATION AND PERFORMANCE REPORT
DRY CARGO VESSEL IN UNITED STATES FOREIGN TRADE
☐ INBOUND ★
☐ OUTBOUND ☆
Port
Entry date
Clearance date
☐ COMBINATION INBOUND AND OUTBOUND
To be filed at the last United States port of call only by companies which have obtained special permission from the Maritime Adm.
1. Name of vessel
2. MA Use Only
3. Flag of registry
4. Type of vessel
Passenger
Freighter
Combination
Other
5. Line or operator for this voyage
Nationality
Yes
No
Do not know
6. Charterer for this voyage
Name
Nationality
Bareboat
Time
Other
None
Scheduled sailing
Other
9. Crew (normal complement include Captain and officers)
10. Inbound port-to-port passenger traffic in order of United States ports of call
U.S. ports of debarkation
Foreign ports of embarkation
Number of passengers including military
Total
1st
Cabin
Tourist
Other
MA USE ONLY
11. Cruise or round trip — Inbound
Foreign ports of debarkation
U.S. ports of embarkation
12. Outbound port-to-port passenger traffic in order of United States ports of call
U.S. ports of embarkation
Foreign ports of debarkation
13. Cruise or round trip — Outbound
New York
New York
New York
Boston
14. Oncarried passengers
15. Passenger capacity for this voyage
16. Vessel activity in foreign ports
List of ports in order of call
Arrival
Departure
Mo
Day
Tons (2,240 lbs.)
Discharged
Loaded
Hours in port
18. On board clearing last foreign port
19. On board clearing last U.S. port
Bunkers
Water
Stores
Ballast
Dunnage
Total
17. Vessel activity in U.S. ports (List by ports of call)
20. Bunkers taken on (Name of port)
* Reason for undue delay

The country in which the vessel is registered.

State gross and deadweight of vessel for this voyage and indicate whether deadweight reported is tropical (T), Summer (S), or winter (W).

All vessels that carry passengers in the foreign trade of the United States are required to report this item. Show the port-to-port movement of passengers, and indicate the class of accommodation. Designate top-class combination vessel accommodations as "first-class," middle class accommodations as "cabin class", tourist class accommodations as "tourist class", third class and any other as "other." Combination vessels having but one class shall be reported under the most appropriate foregoing classification. Freighter passengers shall be reported as "other." Exclude accommodations occupied by vessel's personnel, such as entertainers, etc. Include United States military personnel and families traveling on government order in the class of accommodations occupied as well as a total in the space provided.

List all ports in order of call after leaving the United States on previous voyage. Show month and day of arrival and departure, tons loaded and discharged, and hours in port. (Computed from arrival to departure.) If the vessel was not in the U.S. foreign trade on the previous voyage, report activities beginning with the first foreign port of lading on this inbound voyage.

List all ports in order of call. A complete itinerary of the United States noncontiguous ports must also be included. Show month and day of arrival and departure, tons loaded and discharged, and hours in port. (Computed from arrival to departure.)

Show in long tons, the bunkers taken on at each U.S. and foreign port.

Indicate appropriate P and Date

A4/3

Vessels with accommodations for less than passengers shall be reported as freighters.

Vessels with accommodations for 13 to 99 passengers shall be reported as combination vessels.

Vessels with accommodations for 100 more passengers shall be reported as passenger vessels.

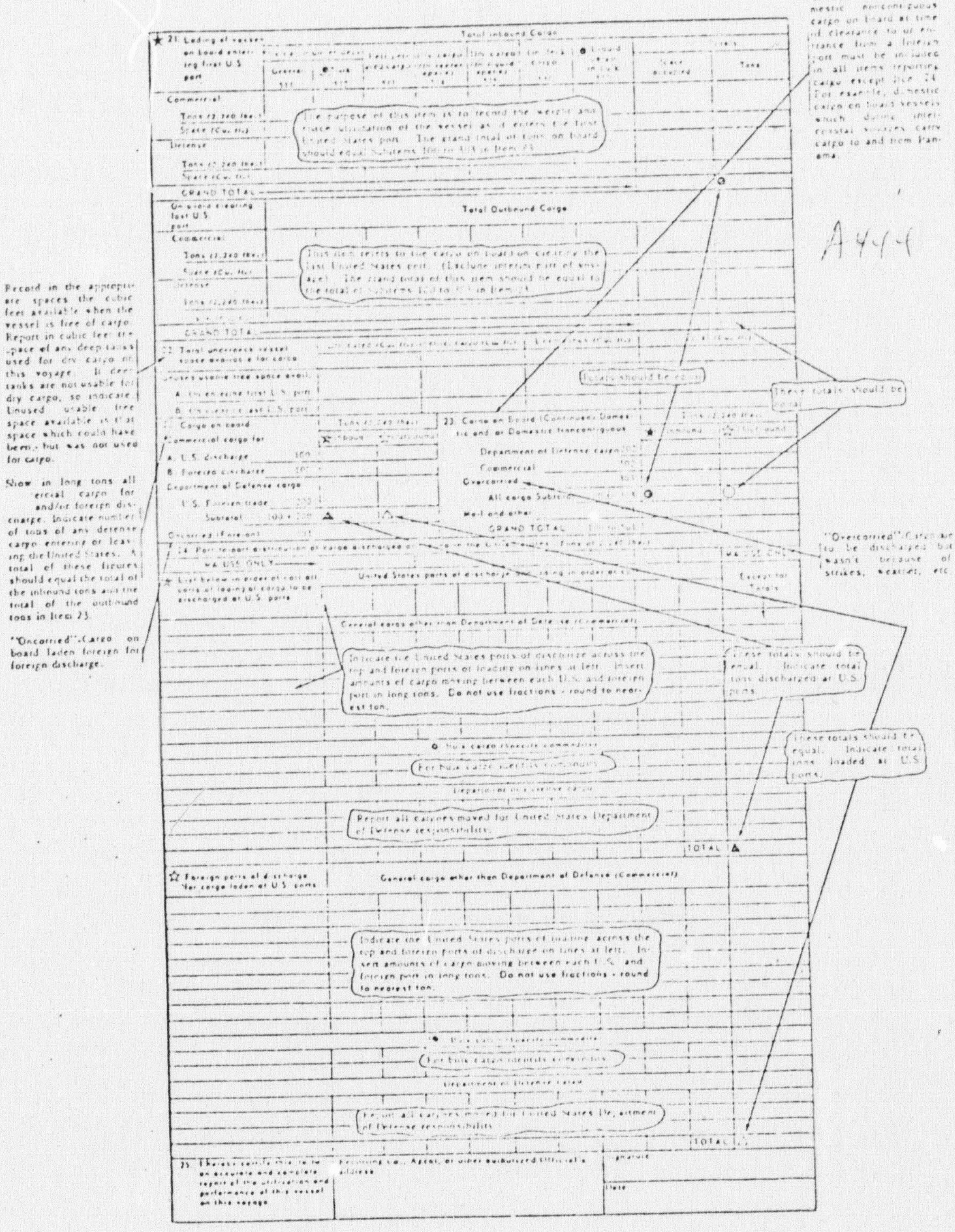
Indicate whether sailing was or was advertised. Advertised in this instance means that a notice of the sailing has been published prior to sailing in newspaper(s) or periodical such as Journal of Commerce, Gulf Shipping Guide, Pacific Shipper etc.

Report all members normal crew in the appropriate department indicated on the form.

Insert the number of passengers debarking item 11 or embarking item 13. If more than one port of debarkation for any port of embarkation, indicate number of passengers by separate item entry. (See illustration covering 25 passengers embarking in New York with 10 debarking in New York and 15 Boston.)

Record the weight (long tons) of bunkers, water, stores, ballast (exclude water ballast) and dunnage on board vessel clearing last foreign port or last United States port. Use estimates where necessary.

"Section 212(A). The operator of a vessel in waterborne foreign commerce of the United States shall file at such times, in such manner as the Secretary of Commerce may prescribe [illegible] regulations, such report, account, record, or memorandum relating to the uti[illegible] and performance of such vessel in commerce of the United States, as the Se[illegible] may determine to be necessary or desirable in order to carry out the purposes and provisions of this Act, as amended. Such report, account, record, or memorandum shall be [illegible] and verified in accordance with regulations prescribed by the Secretary. An operator who does not file the report, account, record, or memorandum as required by this Section and the regulations issued hereunder, shall be liable to the United States in a penalty of $50 for each day of such violation. The amount of any penalty imposed for any violation of this Section upon the operator of any vessel shall constitute a lien upon the vessel involved in the violation, and such vessel may be libeled therefor in the district court of the United States for the district in which it may be found. The Secretary of Commerce may, in his discretion, remit or mitigate any penalty imposed under this Section on such terms as he may deem proper."



"Domestic and/or domestic noncontiguous cargo on board at time of clearance to or entrance from a foreign port must be included in all items reporting cargo except Item 24. For example, domestic cargo on board vessels which during intercoastal voyages carry cargo to and from Panama."

A44

★ 21. Lading of vessel on board entering first U.S. port — Total Inbound Cargo

General 511 | ● Bulk 512 | 513 | 514 | 515 | 516 | ● Liquid 517 | Space occupied | Tons

Commercial: Tons (2,240 lbs.) / Space (Cu. ft.)

Defense: Tons (2,240 lbs.) / Space (Cu. ft.)

GRAND TOTAL

The purpose of this item is to record the weight and space utilization of the vessel as it enters the first United States port. The grand total of tons on board should equal Subitems 100 to 103 in Item 23.

On board clearing last U.S. port — Total Outbound Cargo

Commercial: Tons (2,240 lbs.) / Space (Cu. ft.)

Defense: Tons (2,240 lbs.)

GRAND TOTAL

This item refers to the cargo on board on clearing the last United States port. (Exclude interim part of voyage). The grand total of this item should be equal to the total of Subitems 100 to 103 in Item 23.

Record in the appropriate spaces the cubic feet available when the vessel is free of cargo. Report in cubic feet the space of any deep tanks used for dry cargo on this voyage. If deep tanks are not usable for dry cargo, so indicate. Unused usable free space available is that space which could have been, but was not used for cargo.

22. Total unencumbered vessel space available for cargo

Unused usable free space avail.

A. On entering first U.S. port

B. On clearing last U.S. port

Totals should be equal

These totals should be equal

Cargo on board — Tons (2,240 lbs.) — ★ Inbound ☆ Outbound

Commercial cargo for

A. U.S. discharge 100

B. Foreign discharge 101

Department of Defense cargo

U.S. Foreign trade 102

Subtotal 100 + 102 ▲ △

Uncarried (Foreign) 103

23. Cargo on Board (Continued) Domestic and/or Domestic Noncontiguous — Tons (2,240 lbs.) — ★ Inbound ☆ Outbound

Department of Defense cargo 102

Commercial 102

Overcarried 103 ○

All cargo Subtotal ○

Mail and other

GRAND TOTAL 100 to 104

Show in long tons all commercial cargo for U.S. and/or foreign discharge. Indicate number of tons of any defense cargo entering or leaving the United States. A total of these figures should equal the total of the inbound tons and the total of the outbound tons in Item 23.

"Uncarried"-Cargo on board laden foreign for foreign discharge.

"Overcarried"-Cargo due to be discharged but wasn't because of strikes, weather, etc.

24. Port-to-port distribution of cargo discharged or laden in the United States (Tons of 2,240 lbs.)

MA USE ONLY

★ List below in order of call all ports of loading of cargo to be discharged at U.S. ports

United States ports of discharge (listing in order of call)

Except for Totals

General cargo other than Department of Defense (Commercial)

Indicate the United States ports of discharge across the top and foreign ports of loading on lines at left. Insert amounts of cargo moving between each U.S. and foreign port in long tons. Do not use fractions - round to nearest ton.

These totals should be equal. Indicate total tons discharged at U.S. ports.

● Bulk cargo (Specify commodity)

For bulk cargo identify commodity

Department of Defense cargo

Report all cargoes moved for United States Department of Defense responsibility.

These totals should be equal. Indicate total tons loaded at U.S. ports.

TOTAL ▲

☆ Foreign ports of discharge for cargo laden at U.S. ports

General cargo other than Department of Defense (Commercial)

Indicate the United States ports of loading across the top and foreign ports of discharge on lines at left. Insert amounts of cargo moving between each U.S. and foreign port in long tons. Do not use fractions - round to nearest ton.

● Bulk cargo (Specify commodity)

For bulk cargo identify commodity

Department of Defense cargo

Report all cargoes moved for United States Department of Defense responsibility.

TOTAL △

25. I hereby certify this to be an accurate and complete report of the utilization and performance of this vessel on this voyage | Reporting Co., Agent, or other authorized Official's address | Signature | Date

Legends

● Denotes where figures or totals should be equal.

▲ Denotes where figures or totals should be equal.

○ Denotes where figures or totals should be equal.

△ Denotes where figures or totals should be equal.

★ For inbound items.

☆ For outbound items.

[●] If there is an entry under bulk cargo (Item 23), there should be a figure in one or both of the items in No. 20 (512/517)

10

VESSEL UTILIZATION AND PERFORMANCE REPORT
GENERAL INSTRUCTIONS

The Vessel Utilization and Performance Report (Form MA-578) must be filed in du[illegible] c with the District [illegible] ector of Customs for transmittal to the Maritime Administra[illegible] An accurate form [illegible] completed by the operator of every self propelled [illegible] cargo ssenger vessel, of [illegible] ousand (1,000) or more gross registered tons, engaged in for[illegible] ade with the United States. Such requirements are in accordance with the Maritime istration General Order 52 and Section 21(a) of the Merchant Marine Act of 1[illegible]

Form MA-578, INBOUND must be filed before midnight of the 15th day (not includ[illegible] aturdays, Sundays, or holidays) after Customs entry at the first United States port a foreign port.

Form MA-578, OUTBOUND must be filed before midnight of the 15th day (not in[illegible] g Saturdays, Sundays, or holidays) after Customs clearance at the last United s port for a foreign port.

Form MA-578, COMBINATION INBOUND AND OUTBOUND may be filed ONLY by anies which have obtained special permission from the Maritime Administration ington, D.C. The combination form will have the same 15 day filing period as the ate forms. Requests should be made only by reporting companies wishing to file ports for a carrier, for example, a scheduled berth operator filing all reports from tral reporting office. Separate inbound and outbound reports must be filed for irreg[illegible] carriers and for lines using [illegible] different agents at various ports. Com[illegible] es obtaining permission to file combination reports will be responsible for the data red of every inbound and outbound voyage by the subject carrier and liable to the [illegible] ities incurred for missing reports at any port of first entry or final clearance. If the el is to remain in the United States 45 days or more, a separate inbound and out[illegible] d report must be filed.

5. Form MA-578 is required to be filed in duplicate for all voyages of merchant ves[illegible] sels operated by, or for the account of, the Department of Defense except vessels of the Military Sea Trans[illegible] tation Service (MSTS) nucleus fleet.

6. Consider Hawaii, Alaska, and Puerto Rico as the first or last U.S. port when en[illegible] tering or clearing.

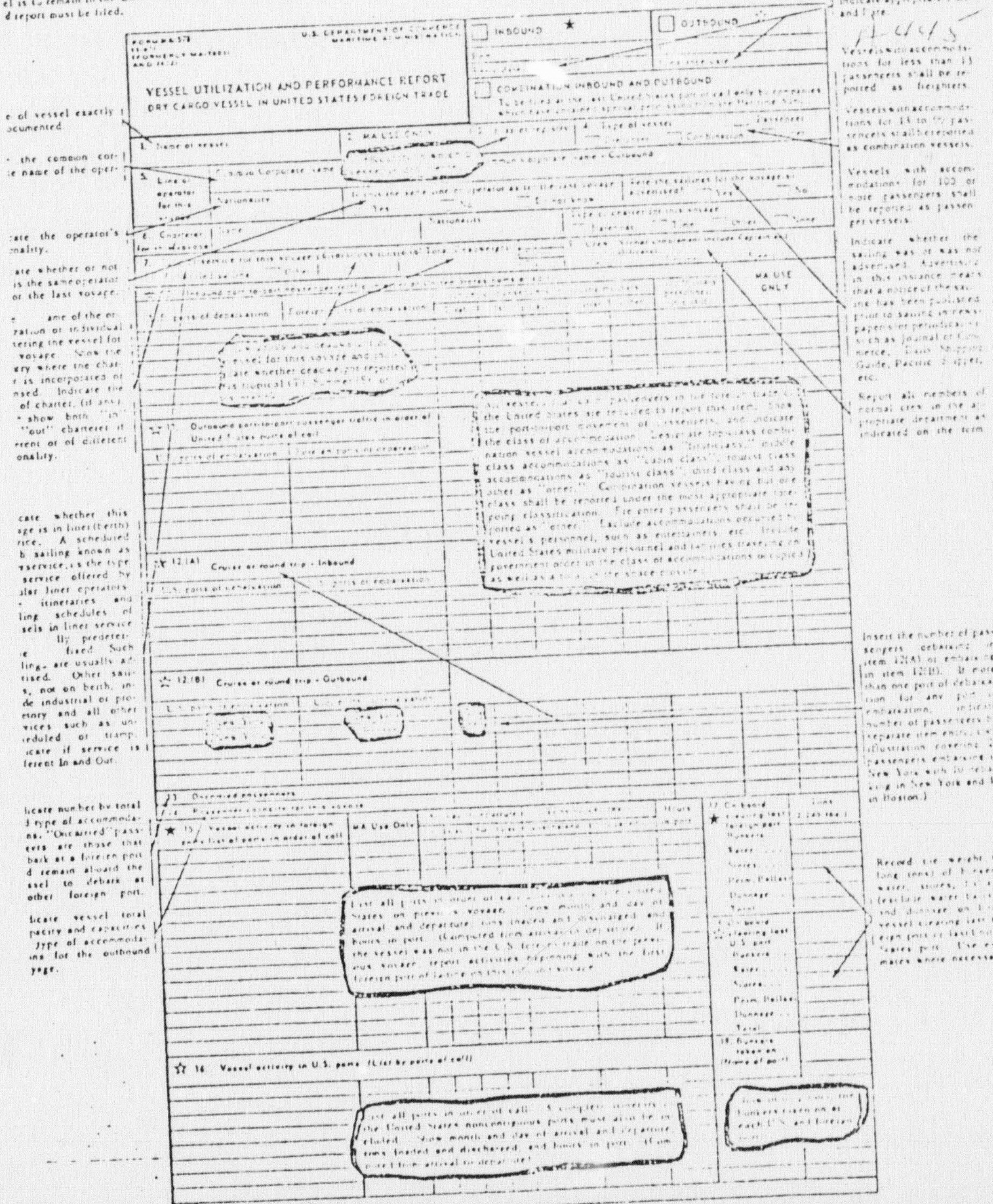
7. "Interim reports" will be required for side trips when vessel is in return to the United States before final U.S. clearance. Interim reports may omit answering items 1[illegible] through 21.

A "side trip" is defined as a call at a foreign port prior to final United States clearance, for example, Seattle to Vancouver, B.C., to Seattle, or New York to Mexico to Los Angeles.

8. If additional reporting space is required for any item, a separate Form MA-578 should be used. Items 1, 2, 3, and 5 should be repeated and the form marked "continuation sheet."

9. Any company wishing to file punched cards in place of the Form MA-578 or certain items on the form may do so by obtaining special permission from the Maritime Admin[illegible] istration. Companies securing this permission will file directly with the Maritime Administration, Washington, D.C., and will be given 30 days to file after departure of the vessel from the last United States port.

10. The term "voyage" for the purpose of this report means "A trip beginning with the first U.S. entrance and completing with the final U.S. clearance."



FORM MA-578
[illegible]
[illegible]
[illegible]

U.S. DEPARTMENT OF COMMERCE
MARITIME ADMINISTRATION

VESSEL UTILIZATION AND PERFORMANCE REPORT
DRY CARGO VESSEL IN UNITED STATES FOREIGN TRADE

☐ INBOUND ★

Port

Entry Date

☐ OUTBOUND ☆

Clearance Date

☐ COMBINATION INBOUND AND OUTBOUND
To be filed at the last United States port of call only by companies which have obtained special permission from the Maritime Adm.

1. Name of vessel

2. MA USE ONLY

3. [illegible] registry

4. Type of vessel ☐ Freighter ☐ Combination ☐ Passenger

5. Line or operator for this voyage — Common Corporate name — Nationality

Is this the same line or operator as for the last voyage? ☐ Yes ☐ No ☐ Do not know

Were the sailings for the voyage(s) advertised? ☐ Yes ☐ No

6. Charterer (if any) [illegible] — Name — Nationality

Type of charter for this voyage ☐ Bareboat ☐ Time ☐ Other ☐ None

7. [illegible] service for this voyage [illegible] Total deadweight

8. Crew [illegible] complement include Captain and officers

MA USE ONLY

10. Inbound port-to-port passenger traffic in order of United States ports of call

U.S. ports of debarkation | Foreign ports of embarkation | Total [illegible]

[illegible] vessel for this voyage and [illegible] state whether deadweight reported is tropical (T), Summer (S) or [illegible]

All vessels that carry passengers in the foreign trade of the United States are required to report this item. Show the port-to-port movement of passengers, and indicate the class of accommodation. Designate top-class combination vessel accommodations as "first class," middle class accommodations as "cabin class", tourist class accommodations as "tourist class", third class and any other as "other." Combination vessels having but one class shall be reported under the most appropriate category classification. Fre[illegible] passengers shall be reported as "other." Exclude accommodations occupied by vessel's personnel, such as entertainers, etc. Include United States military personnel and families traveling on government order in the class of accommodations occupied as well as a [illegible] in the space provided.

☆ 11. Outbound port-to-port passenger traffic in order of United States ports of call

U.S. ports of embarkation | Foreign ports of debarkation

☆ 12.(A) Cruise or round trip - Inbound

U.S. ports of debarkation | U.S. ports of embarkation

☆ 12.(B) Cruise or round trip - Outbound

U.S. ports of embarkation | U.S. ports of debarkation

13. Oncarried passengers

14. Passenger capacity for this voyage

★ 15. Vessel activity in foreign ports (list of ports in order of call)

MA Use Only

Hours in port

List all ports in order of call [illegible] United States on previous voyage. Show month and day of arrival and departure, tons loaded and discharged and hours in port. (Computed from arrival to departure.) If the vessel was not in the U.S. foreign trade on the previous voyage, report activities beginning with the first foreign port of lading on this inbound voyage.

★ 17. On board clearing last foreign port — Tons (2,240 lbs.)
Bunkers
Water
Stores
Perm. Ballast
Dunnage
Total

☆ On board clearing last U.S. port
Bunkers
Water
Stores
Perm. Ballast
Dunnage
Total

18. Bunkers taken on (Name of port)

☆ 16. Vessel activity in U.S. ports (List by ports of call)

List all ports in order of call. A complete itinerary of the United States noncontiguous ports must also be included. Show month and day of arrival and departure, tons loaded and discharged, and hours in port. (Computed from arrival to departure.)

Show [illegible] the bunkers taken on at each U.S. and foreign port.

Reason for [illegible] delay

[illegible]e of vessel exactly [illegible] documented.

[illegible] the common cor[illegible] [illegible]e name of the oper[illegible]

[illegible]tate the operator's [illegible]nality.

[illegible]ate whether or not is the same operator or the last voyage.

[illegible] ame of the or[illegible] zation or individual tering the vessel for voyage. Show the [illegible]ry where the char[illegible] is incorporated or [illegible]nsed. Indicate the [illegible] of charter, (if any). [illegible] show both "in" "out" charterer if [illegible]erent or of different [illegible]onality.

[illegible]cate whether this [illegible]age is in liner (berth) [illegible]rice. A scheduled [illegible]b sailing known as [illegible]service, is the type service offered by [illegible]ular liner operators [illegible] itineraries and [illegible]ling schedules of [illegible]sels in liner service [illegible]lly predeter[illegible] [illegible]e fixed. Such [illegible]lings are usually ad[illegible]tised. Other sail[illegible]s, not on berth, in[illegible]de industrial or pro[illegible]etory and all other [illegible]vices such as un[illegible]eduled or tramp. [illegible]icate if service is [illegible]ferent In and Out.

[illegible]licate number by total [illegible]d type of accommoda[illegible]ns. "Oncarried" pass[illegible]ers are those that [illegible]bark at a foreign port [illegible]d remain aboard the [illegible]ssel to debark at other foreign port.

[illegible]licate vessel total [illegible]pacity and capacities [illegible] type of accommoda[illegible]ns for the outbound [illegible]yage.

Indicate appropriate Port and Date.

11-4-45

Vessels with accommodations for less than 13 passengers shall be reported as freighters.

Vessels with accommodations for 13 to 99 passengers shall be reported as combination vessels.

Vessels with accommodations for 100 or more passengers shall be reported as passenger vessels.

Indicate whether the sailing was or was not advertised. Advertised in this instance means that a notice of the sailing has been published prior to sailing in newspapers or periodicals such as Journal of Commerce, Daily Shipping Guide, Pacific Shipper, etc.

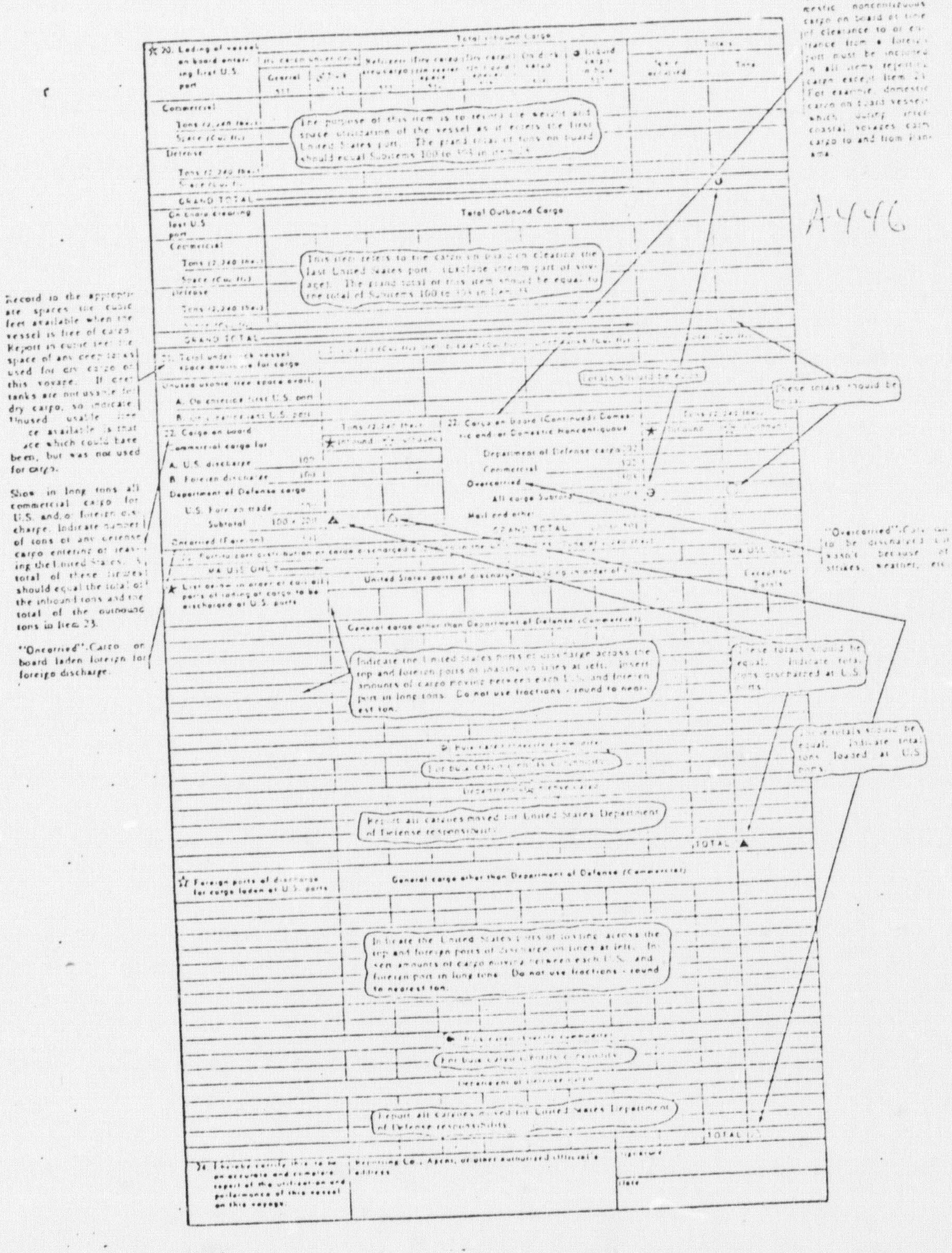
Report all members of normal crew in the appropriate department as indicated on the form.

Insert the number of passengers debarking in item 12(A) or embarking in item 12(B). If more than one port of debarkation for any port of embarkation, indicate number of passengers by separate item entry. (See illustration covering 25 passengers embarking in New York with 10 debarking in New York and 15 in Boston.)

Record the weight (in long tons) of bunkers, water, stores, ballast (exclude water ballast) and dunnage on board vessel clearing last foreign port or last United States port. Use estimates where necessary.

THE MERCHANT MARINE ACT OF 1936

"Section 212(A) The operator of a vessel in waterborne foreign commerce of the United States shall file at such times and in such manner as the Secretary of Commerce may prescribe by regulations, such report, account, record, or memorandum relating to the utilization and performance of such vessel in commerce of the United States, as the Secretary may determine to be necessary or desirable in order to carry out the purposes and provisions of this Act, as amended. Such report, account, record, or memorandum shall be signed and verified in accordance with regulations prescribed by the Secretary. An operator who does not file the report, account, record, or memorandum as required by this Section and the regulations issued hereunder, shall be liable to the United States in a penalty of $[illegible] for each day of such violation. The amount of any penalty imposed for any violation of this Section upon the operator of any vessel shall constitute a lien upon the vessel involved in the violation, and such vessel may be libeled therefor in the district court of the United States for the district in which it may be found. The Secretary of Commerce may, in his discretion, remit or mitigate any penalty imposed under this Section on such terms as he may deem proper."



Domestic and/or domestic noncontiguous cargo on board at time of clearance to or entrance from a foreign port must be included in all items reflecting cargo except item 23. For example, domestic cargo on board vessels which during intercoastal voyages carry cargo to and from Panama.

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☆ 20. Lading of vessel on board entering first U.S. port

Total Inbound Cargo

General | Refrigerated | ● Liquid cargo in bulk | Space occupied | Tons

Commercial

Tons (2,240 lbs.)

Space (Cu. ft.)

Defense

Tons (2,240 lbs.)

Space (Cu. ft.)

GRAND TOTAL

The purpose of this item is to record the weight and space utilization of the vessel as it enters the first United States port. The grand total of tons on board should equal Subitems 100 to [illegible] in item [illegible].

On board clearing last U.S. port

Total Outbound Cargo

Commercial

Tons (2,240 lbs.)

Space (Cu. ft.)

Defense

Tons (2,240 lbs.)

Space (Cu. ft.)

GRAND TOTAL

This item refers to the cargo on board on clearing the last United States port. (Exclude interim part of voyage). The grand total of this item should be equal to the total of Subitems 100 to [illegible] in item [illegible].

Record in the appropriate spaces the cubic feet available when the vessel is free of cargo. Report in cubic feet the space of any deep tanks used for dry cargo on this voyage. If deep tanks are not usable for dry cargo, so indicate. Unused usable free space available is that space which could have been, but was not used for cargo.

21. Total under deck vessel space available for cargo

Unused usable free space avail.

A. On entering first U.S. port

B. On clearing last U.S. port

Totals should be equal.

These totals should be equal.

22. Cargo on board — Tons (2,240 lbs.) — ★ Inbound — ☆ Outbound

Commercial cargo for

A. U.S. discharge — 100

B. Foreign discharge — 101

Department of Defense cargo

U.S. Foreign trade

Subtotal — 100 + 201 ▲ △

Overcarried (Foreign)

22. Cargo on board (Continued) Domestic and/or Domestic Noncontiguous — ★ Inbound — ☆ Outbound

Department of Defense cargo

Commercial

Overcarried

All cargo Subtotal ●

Mail and other

GRAND TOTAL

Show in long tons all commercial cargo for U.S. and/or foreign discharge. Indicate number of tons of any defense cargo entering or leaving the United States. A total of these figures should equal the total of the inbound tons and the total of the outbound tons in item 23.

"Oncarried". Cargo on board laden foreign for foreign discharge.

"Overcarried". Cargo to be discharged but wasn't because of strikes, weather, etc.

MA USE ONLY

★ List below in order of loading ports of lading of cargo to be discharged at U.S. ports

United States ports of discharge

Except for Totals

General cargo other than Department of Defense (Commercial)

Indicate the United States ports of discharge across the top and foreign ports of loading on lines at left. Insert amounts of cargo moving between each U.S. and foreign port in long tons. Do not use fractions - round to nearest ton.

These totals should be equal. Indicate total tons discharged at U.S. ports.

These totals should be equal. Indicate total tons loaded at U.S. ports.

For bulk cargo

Department of Defense cargo

Report all cargoes moved for United States Department of Defense responsibility.

TOTAL ▲

☆ Foreign ports of discharge for cargo laden at U.S. ports

General cargo other than Department of Defense (Commercial)

Indicate the United States ports of loading across the top and foreign ports of discharge on lines at left. Insert amounts of cargo moving between each U.S. and foreign port in long tons. Do not use fractions - round to nearest ton.

For bulk cargo

Department of Defense cargo

Report all cargoes moved for United States Department of Defense responsibility.

TOTAL △

24. I hereby certify this to be an accurate and complete report of the utilization and performance of this vessel on this voyage.

Reporting Co., Agent, or other authorized official's address

Signature

Date

Legends

- ● Denotes where figures or totals should be equal.
- ▲ Denotes where figures or totals should be equal.
- ○ Denotes where figures or totals should be equal.
- △ Denotes where figures or totals should be equal.
- ★ For inbound items.
- ☆ For outbound items.
- [●] If there is an entry under bulk cargo (item 23), there should be a figure in one or both of the items in No. 20 (512/517).

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SUPREME COURT, U.S.

IN THE

Supreme Court of the United States

October Term, [illegible]76

No. 76-1505

MARSHALL P. SAFIR,
Petitioner,

—vs.—

JUANITA M. KREPS, Individually, and as Secretary of Commerce, et al.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

MARSHALL P. SAFIR
Pro Se
41 Flatbush Avenue
Brooklyn, New York 11217
Tel. No.: 212 - 858 - 2700

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IN THE

Supreme Court of the United States

October Term, 1976

No. ....

MARSHALL P. SAFIR,
Petitioner,

—vs.—

JUANITA M. KREPS, Individually, and as Secretary of Commerce, et al.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

Petitioner prays that a writ of certiorari issued to review the judgment of the United States Court Appeals for the District of Columbia Circuit entered in the above-entitled case on February 11, 1977 (Appendix A, page 1a).

Opinions Below

Investigation of Alleged Section 810 Violation, 12 SRR 1105 (Rec. Dec. 1972); *Investigation of Alleged Section 810 Violation*, 13 SRR 809 (MSB, 1973); *Safir v. Dent*, No. 74-1716 (D.C. Cir.); *Safir v. Gibson*, 417 F.2d 972 (2d Cir., 1969); *Safir v. Gibson*, 432 F.2d 137 (2d Cir., 1970), *cert. den.*, 400 U.S. 850 (1970); *Safir v. Gulick*, 297 F. Supp. 630 (E.D.N.Y., 1969).

The judgment of
was entered on Febr
this Court is invoked

(a) Merchant M
after MMA '36) 49
particularly Sec. 50
the payment by the U
of Construction Diff
merchant ships for A
§ 603, 46 U.S.C. 117
under certain conditi
for the operation of
810, 46 U.S.C. 1227
payments to violato

(b) The act or
Act RS § 3490; 534

(c) Administra
[hereafter (APA)]
§ 556(e) requiring
record and support
reliable probative a
5 U.S.C. 706 requi
agency action unlaw
and set aside agen
found to be arbitrar
or otherwise not in
tory right, unsuppo
out observance of p

Jurisdiction

The judgment of the Court of Appeals in Safir III was entered on February 11, 1977. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

Statutes

(a) Merchant Marine Act, 1936 as amended (hereafter MMA '36) 49 Stat. §§ 1985ff, 46 U.S.C. 1101ff, particularly Sec. 501(a) 46 U.S.C. § 1152 authorizing the payment by the United States under certain conditions of Construction Differential Subsidy for construction of merchant ships for American Registry; § 601, § 602, and § 603, 46 U.S.C. 1171, 1172, 1173, authorizing payment under certain conditions of operating differential subsidy for the operation of such ships and *most particularly* sec. 810, 46 U.S.C. 1227 mandating the bar of all subsidy payments to violators of said section.

(b) The act originally known as the False Claims Act RS § 3490; 5348; 31 U.S.C. § 231, § 232.

(c) Administrative Procedure Act, 5 U.S.C. § 551ff [hereafter (APA)] particularly sec. 7-5 U.S.C. § 553, § 556(e) requiring rules and orders to be based on the record and supported by and in accordance with the reliable probative and substantial evidence and sec. 10e 5 U.S.C. 706 requiring the reviewing Court to compel agency action unlawfully withheld and to hold unlawful and set aside agency action, findings, and conclusions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, short of statutory right, unsupported by substantial evidence or without observance of procedure required by law.

Section 810, Merchant Marine Act 1936:

> "It shall be unlawful for any contractor receiving an operating-differential subsidy under title VI or for any charterer of vessels under title VII of this Act, to continue as a party to or to conform to any agreement with another carrier or carriers by water, or to engage in any practice in concert with another carrier or carriers by water, which is unjustly discriminatory or unfair to any other citizen of the United States who operates a common carrier by water exclusively employing vessels registered under the laws of the United States on any established trade route from and to a United States port or ports.
>
> "No payment or subsidy of any kind shall be paid directly or indirectly out of funds of the United States or any agency of the United States to any contractor or charterer who shall violate this section. Any person who shall be injured in his business or property by reason of anything forbidden by this section may sue therefor in any district court of the United States in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee."

Questions Presented

I.

Whether, after affirming the determination of the Maritime Subsidy Board in Docket S243 that Section 810 of the Merchant Marine Act, 1936 had been violated, the Secretary of Commerce has discretion consistent with the statute to seek recovery of less than the sum total of all public subsidy monies claimed by the offending recipient contractors during the 11 month period of violation and improperly paid under Titles V and VI of the Act.

II.

Whether it is within the discretion of the Secretary to refuse to implement the operating differential subsidy agreement articles II-21(f), II-30 and II-31 (withholding subsidy and declaring carriers in default) and to refuse to refer the case to the Attorney General to seek recovery of the construction differential subsidy and operating differential subsidy falsely claimed and illegally paid out without considering the competitive interest of a relator-victim under Title 31 U.S.C. 231, 232, 235.

III.

Whether the discussion in Safir III by the District of Columbia Circuit misconstrued the meaning of the footnote in the Second Circuit decisions in Safir II and Safir IIa as power to mitigate and collect "penalties" instead of discretion to investigate and recommend action to recover subsidies.

IV.

Whether the decision in Safir II in the Second Circuit distinguishing current payments from past recoveries was an erroneous estoppel of the statutory duty of the Secretary of Commerce under Section 810 and his power under the Operating Differential Subsidy Agreement (O.D.S.A.) articles, *supra*, to withhold subsidies from the carriers in default, refer to Department of Justice for prosecution and await final adjudication and recovery on behalf of the United States and the relator-victim before resuming payments?

Statement of the Case

This single continuing dispute has been at issue, in one context or another, for more than a decade. In addition to prior proceedings in this Court and the court below, one or another aspect of this litigation has been passed on by the Federal Maritime Commission, the Maritime Subsidy Board/Secretary of Commerce, the United States District Court for the Eastern District of New York (on five separate occasions), and the United States Court of Appeals for the Second Circuit (on five separate occasions), and the dispute has been before the Supreme Court on petition for writ of certiorari twice by this petitioner and once by the intervening carriers.

A. The Parties

1. Petitioner, Mr. Marshall Safir, plaintiff below, was an owner in Sapphire Steamship Lines ("Sapphire"), a steamship company incorporated in 1965. Sapphire provided service between United States Atlantic and Gulf ports and ports in the United Kingdom and Bordeaux-Hamburg range in Europe.[1]

2. *AGAFBO.* Atlantic and Gulf American Flag Berth Operators ("AGAFBO") was a conference of United States-flag ocean carriers, approved pursuant to § 15 of the Shipping Act, 1916, 46 U.S.C. § 814, and authorized to negotiate rates with the Department of Defense for ocean carriage of military cargoes between United States Atlantic and Gulf ports and all foreign ports to which military cargoes were transported. Virtually all United States-flag ocean carriers serving any of those trades were members.[2] The AGAFBO members were about evenly divided between subsidized carriers—those which were parties to an operating-differential subsidy agreement under Title VI of the Merchant Marine Act,

---

[1] See MSB Docket S-243, *Investigation of Alleged Section 810 Violation,* 12 SRR 1105, 1108-09, 1111 (Rec. Dec., 1972). Throughout this petition, where reference is made to maritime decisions which have not yet been officially reported, the citation is to Pike and Fischer Shipping Regulaton Reporter, identified as "SRR."

[2] See FMC Docket 65-13, *Rates on U.S. Government Cargo,* 11 FMC 263, 264-266 (1967).

1936, 46 U.S.C. § 1101 *et seq.*—and non-subsidized carriers.

3. *Trade Lines.* Throughout this litigation the term "trade lines," most broadly, has had reference to those AGAFBO members which provided service between United States Atlantic and Gulf ports and ports in the United Kingdom and Bordeaux-Hamburg range. In proceedings under § 810 the term "trade lines" has had a narrower meaning, applying only to the *subsidized* AGAFBO carriers in that trade—American Export Lines, Bloomfield Steamship Co., Lykes Bros. Steamship Co., Moore-McCormack Lines, and United States Lines, Inc.

4. *Non-trade Lines.* The term "non-trade lines," during this litigation, has identified those AGAFBO members which did *not* during the period of violation provide service between United States Atlantic and Gulf ports and ports in the United Kingdom and Bordeaux-Hamburg range. In proceedings under § 810 the term has identified the *subsidized* non-trade lines, and it will be so used here. These carriers were also found to have violated the act by the MSB. This finding was affirmed by the Secretary of Commerce on review.

5. *Public Defendants.* In addition to the able new Secretary Kreps, the public officials against which these proceedings have been brought over the past decade have included three Secretaries of Commerce (Messrs. Dent, Stans and Smith) and the last three Chairmen of the Maritime Subsidy Board (Messrs. Gulick, Gibson and Blackwell). Except where the context requires otherwise, we will use the term "Secretary" to refer not only to the Secretary of Commerce but also to his delegates, the Maritime Subsidy Board and Maritime Administrator.[3]

---

[3] The current delegation of authority is contained in Department of Commerce Organization Order No. 10-8. 38 Fed. Reg. 19707.

B. Federal Maritime Commission Docket 65-13

The pending dispute has its origins in a series of rate reductions on military cargo moving between U. S. Atlantic and Gulf ports and ports in the United Kingdom/Bordeaux-Hamburg range which were put into effect by AGAFBO in 1965. The reductions were designed to destroy Sapphire, which had just entered that trade. The reduced AGAFBO rates were maintained for 11 months, and were terminated March 1, 1966.[1] Their legality was among the matters considered by the Federal Maritime Commission in its FMC Docket 65-13, *Rates on U. S. Government Cargo*, 11 FMC 263 (1967), an investigation "of virtually the entire spectrum of practices surrounding the procurement of ocean transportation of U. S. military cargoes." 11 FMC at 264. The Commission also considered charges by Sapphire that a variety of additional actions alleged to have been taken by AGAFBO or its individual members to discourage the Sapphire service were in violation of the governing AGAFBO agreement, or the provisions of the Shipping Act, 1916. *Id.* at 280 *et seq.* The Commission decided (i) that "AGAFBO's rates * * * were reduced to an admittedly noncompensatory and unreasonable level in an attempt unfairly to compete with Sapphire [and] were so unreasonably low as to be detrimental to the commerce * * * "; (ii) that the rate action was in result a violation of §§ 15 and 18(b)(5) of the Shipping Act, 1916, 46 U.S.C. §§ 814, 817.

C. Safir I

Safir v. *Gulick*, E.D. N.Y. Civil No. 68 C 643, was an action filed by Mr. Safir in the United States District Court for the Eastern District of New York against the

---

[1] See *Rates on U. S. Government Cargo*, 11 FMC 263, (1967).

Acting Maritime Administrator and the Secretary of Commerce. The complaint was filed several months after the Federal Maritime Commission (which is wholly independent of the Secretary, and administers a separate statute) had issued its Docket 65-13 decision. The complaint, reciting that it was based on § 810, sought the following relief in implementation of the FMC Docket 65-13 findings that the United Kingdom/Bordeaux-Hamburg rate reductions had been unfair to to Sapphire:

> "A. A judicial declaration adjudicating that the making of any subsidy payment of any kind out of the funds of the United States to the carriers who were members of AGAFBO during the time period covered by the decision of the Maritime Commission, Docket No. 65-13, is illegal in violation of 46 U.S.C. 1227;
>
> "B. That an order of prohibition be issued prohibiting and enjoining the defendants from continuing to make such subsidy payments;
>
> "C. That an order be issued directing the defendants to commence appropriate legal action to recover the subsidy payments heretofore illegally made; * * * "

The District Court dismissed on the dual grounds that Mr. Safir lacked standing to bring suit, and that the actions sought to be compelled—the prohibition of payment of subsidy for the future, and the collection of subsidy paid in the past—were within the unreviewable discretion of the Secretary. *Safir* v. *Gulick*, 297 F. Supp. 630 (E.D.N.Y. 1969). The Second Circuit reversed the dismissal, ruling that the Secretary's discretion under § 810 was not unlimited and that Mr. Safir did have standing to compel the Secretary to act. The Second Circuit interpreted § 810 (i) to *require* the Secretary to discontinue *current* payments of subsidy during a period of *continued* violation of § 810, and (ii) to *authorize* the Secretary, to recover subsidy paid during the period of violation which had occurred in the past. Furthermore, he could not refuse to seek recovery without considering the interest of the victim. *Safir* v. *Gibson*, 417 F.2d 972 (2d Cir. 1969).

D. Safir II

Without awaiting instructions the Maritime Subsidy Board initiated a proceeding, denominated MSB Docket S-243, for the stated purpose to "compile a public record 'which will provide a basis for recommending to the Maritime Subsidy Board whether Section 810 * * * has been violated and the appropriate action that should be taken.'" *Safir* v. *Gibson*, 432 F.2d 137, 140 (2d Cir. 1970). Docket S-243, which is under review in the present action, will be discussed under the next heading of this memorandum. Its relevance at this point results from the fact that once the Board's Order of Investigation was issued petitioner returned to the Eastern District with the claim that the Secretary was disregarding the Second Circuit ruling by initiating the proceeding. Petitioner's demand was that the Secretary immediately be enjoined from making any further payments of subsidy to the subsidized AGAFBO lines. The injunction was denied, and that ruling was affirmed by the Second Circuit on review. *Id.*

But when the case came before it this second time, the Second Circuit also undertook to analyze the legal significance of the Commission's Docket 65-13 findings in the pending MSB Docket S-243 proceeding, and ruled that the Commission findings that the AGAFBO rates were unreasonably low and unfair to Sapphire compelled, on principles of collateral estoppel, that the Secretary also find that the rates were "unjustly discriminatory and unfair" to Sapphire within the meaning of § 810 and conclusive of violation if the victim met certain criteria (*infra*). The Second Circuit, speaking through Judge Friendly, to assure procedural due process footnoted:

> "Nothing we have said should be read as preventing the Maritime Administration from investigating the nature and extent of the individual carriers' participation in the illegal action, should it find these matters relevant to its ultimate decision of whether to seek recovery of subsidies paid during the violation and, if so, how much and from whom." 432 F.2d 137 at 145, n. 2.

E. Safir II 2A

The trade and non-trade lines were granted permission to intervene following the decision in Safir II for the purpose of filing a petition for rehearing. This petition was then denied on the grounds that the footnote in Safir II would give them a forum to defend themselves as it would give the government an opportunity if desired to investigate whether a wider conspiracy existed. See appendix S, page 201A. This decision clearly granted to the agency the finding of fact but in no way could be read as abdicating the courts power under the law-fact distinction.

Mr. Safir sought Supreme Court review of the Second Circuit decision by writ of certiorari. This was denied, as was a conditional cross-petition filed by the carriers. 400 U.S. 850, 942. Mr. Justice William O. Douglas was of the opinion that certiorari be granted in the Safir petition at that time. There was no public comment by the Court on the cross-petition wherein the carriers challenged the collateral estoppel effect of the FMC action on Section 810 and which was denied at a later date.

F. MSB Docket S-243

The Maritime Subsidy Board began its Docket S-243 investigation in October, 1969. Petitioner, as well as all subsidized AGAFBO carriers, were named parties. A lengthy hearing was conducted before the Board's Chief Administrative Law Judge who, in a Recommended Decision served April 24, 1972, found all of the *trade* respondents—those serving the United Kingdom/Bordeaux-Hamburg range in which Sapphire operated—to have violated § 810 during the 11-month period in 1965-1966 when reduced rates were maintained in the United Kingdom/Bordeaux-Hamburg range. He recommended recoveries totalling approximately $10 million.

The Board's Opinion and Order on exceptions from the Recommended Decision was issued April 16, 1973. The opinion affirmed the finding of violation by the trade lines and, subject to audit and verification, assessed a recovery of subsidy against them which, in aggregate, totaled slightly less than $2.4 million. This assessment was substantially less than the subsidy paid to the lines for that 11-month period of the violation and, for each individual line, was based on an appraisal of the nature of that line's participation in the illegal activity as well as of other mitigating factors of record. With respect to the non-trade lines, the Board reversed the Administrative Law Judge and found that the non-trade lines had indeed violated the Act but recommended no penalties against them under a mitigation theory that these lines had not participated in the illegal rate conduct.

The Board's April 16, 1973, Opinion and Order was made final by action of October 10, 1973. [14 SRR 77] Petitions for review of the Board decision were filed by the lines with the Secretary of Commerce pursuant to Department of Commerce Order 10-8, 46 C.F.R. Part 202. The Secretary declined to reverse the Board determination insofar as it affected the nontrade lines culpability.

G. Additional Litigation by Petitioner To Compel Agency Action

In addition to the proceedings already identified, Mr. Safir, on five separate occasions during the pendency of Docket S-243, moved either in the Eastern District of New York, directly in the Second Circuit, or in the United States District Court for the District of Columbia to have continued payment of operating-differential subsidy to the trade and non-trade lines enjoined, or to have review on an interlocutory basis of the decision of the Maritime Subsidy Board that it would not require recovery from those lines of the entire subsidy paid to them for the 11-month period. Petitioner consistently claimed, as he claims here, that § 810 imposes an inflexible requirement for recovery of all subsidy received by a line on account of operation during the past period of § 810 violation.

1. *In the Eastern District of New York.* Three of the proceedings were brought in the Eastern District of New York. A petition filed with the Eastern District in June of 1971 sought an injunction barring the Secretary from disbursing subsidy to the trade and non-trade lines out of funds which had been made available by the Congress in a supplemental appropriations bill, P. L. 92-18, designed to liquidate a large accrued subsidy liability to the subsidized lines. *This petition was granted as to*

those funds which pertained to the eleven-month period. The June 22, 1971 order of the Eastern District which did require the Secretary, in the alternative, to withhold any additional payments of subsidy applicable to the operative 11-month period in 1965-1966, or to obtain sufficient security for recovery of such additional payments, until the Secretary had made his underlying determination of whether to recover subsidy for that period. 330 F. Supp. 225 (E.D.N.Y. 1971) was dissolved in October, 1974, following the Secretary's final decision in Docket S-243, on ground that "[t]he required informed decision of record has now been made." An attempt by the defendants to dismiss District Court E.D.N.Y. 68 C 643 in 1975 was denied. This forum remains open.

2. *In the Second Circuit.* In April of 1973, after the Board had issued its Opinion and Order, but before the Board had issued its supplemental and final order, Mr. Safir "moved" directly in the Second Circuit for an order reversing and setting aside the Board action insofar as it failed to require recovery of all subsidies accruing to the trade and non-trade lines for the 11-month period of the United Kingdom/Bordeaux-Hamburg rate reductions. The motion was grounded on the claim that § 810 imposes an absolute obligation on the Secretary to recover those subsidies. This motion was denied without opinion, and a petition to the Supreme Court for a writ of certiorari was also denied. 414 U.S. 975. The Solicitor General Bork argued that review was premature (see App. L, p. 93a) as the process of administrative exhaustion was not final at that stage.

3. *In The District of Columbia.* Finally, following the Board's final opinion, but while the proceeding was pending on review before the Secretary of Commerce,

Petitioner filed an action to review the Board decision in the United States District Court for the District of Columbia, D.C.D.C. Civil Action No. 2156-73. That complaint was dismissed as premature by Judge Corcoran. The Secretary's Order of September 9, 1974 finally issued which set the stage for the judicial review.

This was an action by petitioner against the Secretary to review the MSB Docket S-243 decision and to order the Secretary to recover all subsidies paid to both the trade and non-trade lines for the 11-month period in 1965-66 during which, it was found by the Board, they had violated § 810. Both the trade and non-trade lines were granted permission by the court below to intervene in the action as defendants. D.C.D.C. No. 74-1474, Order of March 3, 1975. In addition, the trade and non-trade lines each have filed separate actions against the Secretary, in which the carriers contend that the findings that they have violated § 810 are wrong. Complaints, D.C. D.C. Civil Action Nos. 74-1788, 75-0077. These later actions were stayed by the District Court pending decision on petitioner's appeal to the District of Columbia Circuit. Plaintiffs in those actions indicated to the District Court their intention to dismiss those actions if the decision was affirmed in the Circuit Court.

The proceeding came before the District Court on Petitioner's motion for summary judgment seeking a determination that the Secretary must recover all subsidies paid the trade and non-trade lines for the period of the § 810 violation, and on cross-motions by the Secretary, the non-trade lines, and the trade lines seeking dismissal of the complaint. The District Court denied petitioner's motion, granted the cross-motions, and dismissed the complaint. The Court of Appeals reversed in part and remanded the case to the District Court (Appendix A).

H. Safir III

I. The Footnote Was Misinterpreted

The plain truth is that misinterpretation of a single footnote in Safir II has caused the decision-making process to collapse into an absurdity, which Judge Wright recognizes in Safir III when he states that the actions of the Secretary of Commerce "gives little assurance that we have been presented with an order resulting from a reasoned decision making process." (Appendix A, p. 17a).

The footnote from Safir II, states:

"Nothing we have said should be read as preventing the Maritime Administration from investigating the nature and extent of the individual carrier's action, should it find these matters relevant to its ultimate decision on whether to seek recovery of subsidies paid during the violation and, if so, how much and from whom." (Appendix V, p. 220a).

This footnote has been seized upon by the Maritime Administration, the Secretary of Commerce and counsel to the subsidized lines as the discretionary escape hatch from the draconian probability inherent in the literal meaning of the statute itself. And petitioner admits that his own erstwhile counsel construed the footnote in like manner in his first petition to this Court 388-1970 400 U.S. 850, *cert. denied.* The interpretation is wrong. The troublesome footnote, as will be seen below, ironically became the trap into which the "non-trade" lines have now been ensnared in the finding of violation when in Safir II-A, following a restatement of the footnote, the Court suggested as follows:

> "On the other side, the government is fearful lest the 'tenor of the opinion and the rationale un-

> derlying it would appear to foreclose the Maritime Subsidy Board from investigating and concluding, contrary to a majority of the FMC that a wider conspiracy existed.
>
> But, there was no 'majority' finding on the issue of a wider conspiracy since the four participating members divided 2 to 2. The issue, therefore, remains 'open.'" (Appendix S, p. 204a).

It was this footnote grant of discretion to facilitate procedural due process on the questions of fact that has emboldened those who would eviscerate section 810 to make claim that the judicial questions were abdicated to the purview of the administrative body (*NLRB* v. *Hearst Publications*, 322 U.S. 111, 136), and where the administrative body could afford to come to grips with the difficulty in the evidence that the non-trade lines violated the act because the embarrassing fact could be mitigated to a point of near exoneration.[4]

And yet, the learned Judge Wright, in assessing the footnote and questioning both the rationale for and the legality of an order of the Second Circuit to adjudicate what Judge Friendly characterized as a contract dispute, took this footnote as a valid foundation for the denial of petitioner's motion for summary judgment by Judge Bryant D.C.D.C. (Appendix A, p. 13a) on the theory that the footnote in some way made the right to mitigate recovery a discretionary grant by the Second Circuit. Petitioner finds it difficult to cast stones when his own misreading had permitted counsel for the non-trade lines in the court below to nurture the misreading without rebuttal.

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[4] It is noted that the Court's opinion on page 3a erroneously uses the term "exoneration" of the non-trade lines. They were not exonerated, they were mitigated.

Mitigation of recoveries is promulgated to be acceptable because it was granted by Judge Friendly's decision in Safir II. This position is at odds with the MSB admission that the Second Circuit did not make any definite finding regarding any discretion in connection with past violations. See MSB final order, Appendix N, page 125a.

Neither the Administrative Law Judge, nor the MSB when they embarked on their discretionary course, felt themselves as secure as Judge Wright's opinion would lead one to believe they should have felt. The remand of docket 74-1474 to the District Court would create an article III forum for this petitioner, to be sure, but one in which he would be enmeshed in a review bounded on one side by the capriciousness of the former Secretary of Commerce whose recovery recommendation represents one-half of one percent of the subsidies paid out during the period of violation and, on the other hand, by an Administrative Law Judge whose "harshness" called for a recovery of a mere five percent of the subsidies paid out during the eleven-month period of violation.

The transitory significance of the footnote as a grant of discretion to the exercise of irresponsible mitigation is contained in a colloquy which took place on October 4, 1974 before Judge Dooling of the Eastern District of New York about one month after Secretary Dent's decision. The Department of Justice moved for an order relieving the government from further restraint of the District Court's injunction of June and Judge Dooling was discussing his reasons why the injunction would be vacated:

The Court: You see—I take it that the Secretary's action does comply with what was the point of my original determination. In other words, with the right clearly in mind, and after full administrator review, he has decided that this is not an all right amount. And what I was concerned with and the only reason for having granted the injunction was that that critical administrative step had never been taken.

In other words, that the Government has never reverted to it's right under Section 8, whatever it is—

Safir: 810.

The Court: Until they learned from Chief Judge Friendly that they had the right. And then it was too late because they had already granted the subsidy. If this was in a way a reconsideration of the grant of subsidy after full review and in the light of the demonstrated violations of law, *so now he's done it, if he is wrong, well, he's no wronger than a Public Officer usually is, but he's not entitled to secure himself. Nor is the Government entitled to be secured against the possibility that it may have failed to be generous enough to itself.*

Fleischer: Yes, I understand what you are saying. I do feel, unless you can correct me, your Honor, that he has a right that he is asking for right now in your decision itself. You did not order him not to pay out, you just said don't pay out unless you've made a decision, and in which case on straight grounds as to why you made it. And so that there is no requirement really for him to come into your Courtroom and ask for relief at this particular time.

The Court: Except as Mr. Felischer [sic] pointed out, what with the way things have been going recently he was not of a mind to run the risk that I might think he should have.

Safir: Well, once you disabused him of that—

The Court: I think that really is all he wants. So I think my decision would have to be that the net payment can be made and that you will have to go to whoever succeeds Judge Corcoran (phonetic) if he doesn't get it as a related case and be ready to go in there sometime Monday and get him to give you whatever threshhold relief he may think you are entitled to. And then at that time, tell him exactly how wrong I can get things out of this whole mess, this is the only thing that I did that was right and only temporarily right.

Safir: I wouldn't say that. I think you did a lot that was right and helpful to me. Even when you turned me down.

Another light cast upon the footnote is its dependence for significance on the relevancy of competitive behavior. In the Journal of Maritime Law and Commerce edition of October of 1970, it is stated coincidently by footnote:

> "The effect of an individual carrier's active participation or lack of it depends on the form which the violation takes. It is a violation of section 810 to 'continue as a party to . . . any agreement' which violates the act, supra note 1. Hence lack of active participation would be irrelevant if the non-participating carrier remained a party to the prohibitive agreement." (See App. X, p. 246a).

But in spite of this simple explanation, the one-sentence footnote in Safir II became for this petitioner a six-year sentence to a dilatory administrative proceeding whose basic legality is now being questioned in the District of Columbia Circuit.

Judge Wright takes cognizance in his evaluation of the present state of the case where on page 15a (App. A), of the instant decision, he questions the Second Circuit's acceptance of the administrative procedural prerogatives staked out by MARAD in Docket S-243 prior to Safir II and which created the forum for foot dragging via psuedo-formal adjudication (contrast *Dunlop* v. *Bachowski*, 421 U.S. 560 (1975)). If no statutory provision exists which would authorize such a procedure, then all that was required by the administrator (Secretary) was an answer consistent with the statute confirming that this petitioner and his steamship line met the criteria in Safir II for the finding of a violation—"subject only to the proof that the AGAFBO Lines were receiving operating differential subsides at the time and the carrier adversely affected was "a citizen of the United States who operates a common carrier by water exclusively employing vessels registered under the laws of the United States on any established trade route from and to a United States port, or ports.'" Safir II, App. V, p. 213a.

If the District of Columbia Circuit had contoured the scope of administrative review, an answer by the administration to the District Court would not have taken six years and placed the statute of limitations on a false claims act recovery by the United States in jeopardy. (See petitioner's reply brief, Appendix C, pp. 47a-50a, 53a).[5]

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[5] *Templeton* v. *United States*, 199 F. Supp. 179-186, is pertinent here, but not dispositive if a conflict between the Circuits developed.

But, while the footnote was a non-statutory license for discretionary delay, the ultimate conclusions, the Board and later the Secretary, were faced with were inevitable. The "non-trade" lines were in violation of the statute with the trade members of AGAFBO because of the irrelevancy of the nature and extent of participation in light of the statutory language. The logic of the footnote # 54 in Exhibit X, p. 246a, *supra*, is clearly dispositive of the issue.

If the footnote in Safir II was irrelevant on the issue of fact, as it turned out to be, then the Safir III decision's reliance on its as a mitigative tool must fall. The issues of law were closely reserved to the Court in Safir I. "There may be other limits on his discretion" Safir I at 978. Nothing in an irrelevant footnote could be read to grant relevant power to seek lesser recoveries.

II. Recovery Of Public Subsidy Money Is Not A Forfeiture Or Penalty Of Moneys Earned.

Despite the use of the term "penalty" used by the Circuit Court of the District of Columbia in Safir III, recovery of subsidy illegally paid is not a penalty as section 810 is not a penal statute. It is a return to the United States Treasury of moneys falsely claimed by the violating carriers when they, without the consent or the knowledge of the government contracting authority (the Maritime Administration), abrogated their subsidy contracts and the statutory provisions of the Merchant Marine Act of 1936 establishing these contracts. At issue is the actual recovery of payments estimated to be in excess of $200,000,000 not as forfeits, not as fines, not as penalties, but as funds falsely claimed and improperly paid out.

The Maritime Administration, through its Chief of litigation, stated succinctly in Docket S-243 ". . . in the present case and notwithstanding the inclusion of the requirements of section 810 of the act in each and every subsidy agreement, the respondents did not request the contractual permission, but proceeded to effect rate reduction and to wage battle before the FMC. *Once the Board was involved, and only through the behest of Mr. Safir,* the respondents firmly denied to this date that rate actions are subject to the section. These distinctions are all too apparent. *What remains is a clear provision of the subsidy contract and an explicit statute both binding on the respondents as of the day they first began, without any overture to the Maritime Administration, the unlawful behavior.*"

Petitioner contends that all of such payments must be recovered and that there is no ability on the part of the administrator to waive this recovery. The Second Circuit in Safir I did not say "some of such payments", or "part of such payments". An attempt at administrative revision of this wording was thwarted by this petitioner when the first edition of the MSB decision in S-243 of April 16, 1973 was published, contrast Appendix G with the original printed prior to petitioner's protest (Appendix H) as to the words "all or part" in footnote 58. This sly pattern of legal revisionism was not reserved to the printer of the government document. It was used in the brief of the so-called "trade-defendant intervenors" in this action.

In their memorandum brief, before the District Court they quote the Second Circuit opinen as follows: "The legislative history of section 810 demonstrates that termination of subsidies was not considered a desirable by-product. *Safir* v. *Gibson*, 417 F.2d at 97." The quote as the opinion properly reads as follows: "The legislative history demonstrates that termination of subsidies was not designed to be a purely penal measure, although quite likely the punitive effect was considered a desirable by-product." The importance of this wishful revision can not be overlooked because the crux of the "mitigation" argument is the "penal" characterization of the command of section 810.

This misquotation of the Second Circuit opinion spotlights the inapplicability of the mitigation concept altogether. Seen in this light not only is the inducement of certain Department of Defense officials in the illegal action irrelevant, but the penalty formulae concocted out of misleading euphemisms, such as "mitigated recoveries of subsidy" only compound the capriciousness of the order of the Secretary of Commerce, (see Appendix E, page 58a).

A revealing aspect of the Secretary's dilemma can be found in his frank answer to the subsidized violators in a United States District Court action against him CADC No. 74-1788 (see Appendix I, page 62a). When he defends his action against these violators, he is in complete agreement with this petitioner's position. His answer to the complaining violators states: ". . . by characterizing defendants' orders requiring a recovery of public subsidy money as working a forfeiture or 'penalty' of money 'earned', plaintiffs' materially misstate the true facts. Although plaintiffs use such terms throughout their complaint, this allegation will not be repeated." (App. J. p. 73a).

The Secretary apparently found his own "mitigated recovery of subsidies paid" a better if misleading euphemism for an illegal penalty assessment. Nonetheless, one can not mitigate recovery of unearned government funds illegally disbursed without leaving in the pockets of the violators moneys belonging to the public treasury. His peremptory command "This allegation will not be repeated." apparently was to apply only to Docket 74-1788

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and not to the action brought by this plaintiff in Docket 74-1474 in the District Court, District of Columbia where the record is replete with the Secretary's and the intervenor's use of the words "penalty" and "forfeiture" for months after this January 3rd, 1975 protest.

III. The Secretary Of Commerce Has Not Fulfilled His Duty To Petitioner.

Petitioner submits that there are no grounds consistent with section 810 of the statute which would grant the Secretary of Commerce, after a finding of violation, any discretion to refuse to invoke and implement the Operating Differential Subsidy Agreement (ODSA articles II-21(f), II-30, II31) withholding subsidies and declaring the carriers in default and to refer the case to the Attorney General of the United States to recover the subsidies falsely claimed by instituting suit against the violators on behalf of the United States and the relator-victim.

In the case at bar, a finding of violation of section 810 came about on the information of and at the behest of the victim of the violation. And the law of the case, if such there be, is that the Secretary of Commerce is under a Court mandate in two Circuits to consider the victim's competitive interest in re-entering the shipping business. Further, the Court of Appeals for the District of Columbia Circuit has held that, Congress intended a victim would profit through recovery of illegally-paid subsidies. And under 28 U.S.C. Section 1361, the Secretary of Commerce has a duty to the plaintiff-victim, i.e. an obligation to withhold subsidy payments, declare the carriers in default and seek recovery in the District Court. *Petitioner to this day rejects the proposition in Safir I that current subsidy payments are mandatory while recovery amounts are adjudicated.*

Neither Court of Appeals in their concern for the victim has however, pointed to any statute which could accommodate the implementation of such re-entry. The only statute affording such relief to both the victim and the government is Title 31, U.S.C. 231, 232, 235.

The United States is not an uninjured party in this case, but is instead a major injured party. As the Second Circuit stated in Safir I, "Even if the victim is successful in a treble damage suit against the violator, his recovery does not correct the evil at which section 810 was aimed, namely that public moneys have been used to assist some citizens to hurt otehrs in a *manner inimicable to the interest of the United States.* Nor is the sum sought to be exacted grossly disproportionate to the actual damage because the sum is less than the damages to the United States when a percentage of the recovery must be paid to the party at whose behest the fraud was uncovered (*United States ex rel. Marcus* v. *Hess.* 317 U.S. 537-561; *United States* v. *Griswold*, 24 F. 366).

Reasons for Granting the Writ

Certiorari should be granted because important questions of Federal law in the administration of the Federal Ship Subsidy Program have arisen which have not been, but should be, settled by this Court.

Sec. 810 of the Merchant Marine Act, 1936, 46 U.S.C. Sec. 1227 has never been construed or applied by this Court. This case is one of first impression. Judge Friendly (Safir I (1969):

> ". . . It is unfortunate—though not surprising—that Sec. 810 does not deal expressly with a situation where the Maritime Administrator refuses to take steps concerning subsidy payments to violators; since it does not, we must analyze the statu-

tory scheme as a whole and the legislative history of the Act to arrive at a judgment of what Congress would have wanted done if this problem had occurred to it. . . ."

". . . We deal here with an issue requiring reconciliation of two conflicting statutory purposes—the general pjolicy of the act to build up the American Merchant Marine through subsidy payments and the direction of Sec. 810 for withdrawal of those subsidies when they are used to hurt rather than help." (*Contrast Citizens to Preserve Overton Park* v. *Volpe*, 401 U.S. 402 (1971) also App. B, pp. 29-32).

Eight years have passed and yet Judge Wright correctly restates in Safir III 1977 "The case is one of first impression."

Petitioner contends that the remand order in Safir III should be modified to direct the Secretary of Commerce to withhold subsidy payments past due and suspend subsidy payments currently accruing until he has set aside an amount equal to the subsidies, construction and operating, allocable to the period of violation and declare the contracts in default pending this eventuality.

The Secretary should be directed to refer the case for prosecution under Title 31, U.S.C. 231, 232, 235 for recovery of civil damages on behalf of the relator-victim and the United States and that the recovery of that portion which the courts deem the share of the relator-victim be directed to be re-invested in the American Merchant Marine.

It should be held by this Court:

(1) that the violators of Sec. 810, the intervenors-respondents must at least refund the subsidy payments they received during the eleven month period.

(2) that the Maritime Administrator does not have any discretion whatever to waive the recovery in whole or in part of any subsidy payments made while the carriers were violating the statute.

(3) that Section 810 states that two forms of conduct are unlawful:

> (1) "to continue as a party to or to conform to any agreement with another carrier or carriers by water."
>
> (2) "or to engage in any practice in concert with another carrier or carriers by water, which is unjustly discriminatory or unfair."

The Solicitor General, in his brief in opposition to a petition for certiorari in Safir II 400 U.S. 850, agrees with petitioner's contention here that "the penalty created by section 810 is inflexible as it bars all subsidy payments for at least the period of violation." He also agrees therein that the violation was *willful* (App. R, p. 199a). He makes no distinction between violators who sat together at meetings where the offending rates were being voted on (see MSB findings in S-243 Appendix N, pp. 118a-123a), wherein the Board stated as to the "non-trade" lines: "It is clear that indirectly most of them saw the matter possibly spreading in terms of rate reductions and competition in their own area and achieved benefits in that such rate reduction did not spread to other areas. It is an *inadequate rebuttal by either non-trade or trade respondents that a finding of violation is precluded* because such respondents would have had to resign to avoid violating section 810, thereby breaking up the AGAFBO conference which allegedly the government desired to continue. *American subsidized operators can not be parties to unfair and unjustly discriminatory agreements against any other American flag operator covered by the provisions of section 810 without violating that section.*" (Also see footnote 18, pp. 120a-121a).

Judge Wright's decision which singles out the Secretary for his unwillingness to protect this petitioner's interest in his desire to re-enter the shipping business does not take into account that his own discretionary interpretation of the footnote precludes the Trial Judge on remand from rejecting the mitigation concept at the threshhold, and destroys section 810 as a deterrent to predation.

The sum of one half of one percent as in the case of the Secretary's recommended recovery, or five percent at the other end of the mitigation spectrum, are both miniscule sums to be returned to the donor, the United States government, when this "sick corrupt" industry, by its own admission, is paying illegal rebates to shippers and illegal campaign contributions to federal officials for favorable legislation and whose entire subsidy structure is being questioned as to its value to the United States under current circumstances (see appendix exhibit Y, p. 250a, Letter to Colleagues from Congressman Paul McCloskey, with enclosures).

The construction of section 810 by the Court of Appeals severely limits the operative efficacy of the sanctions in the statute to deter violators. At the worst, the offenders face only the possibility of a penalty or fine being levied, and at best having the proceeding mooted, if the victim does not bestir the authorities to action, thus the sanctions in section 810 become a dead letter instead of a viable weapon in the preservation of competition. Five of the intervenors settled for only $165,000. for their violations of the Shipping Act of 1916. This occurred only after this action was commenced, and after the first opinion of the Court of Appeals was announced in an eleventh-hour attempt to forestall the collateral estoppel effect of the FMC decision. This was five years subsequent to the violation. Seven more years have passed and additional moneys refunded

hastily and voluntarily by the trade lines as a result of the Secretary's order reach a total of less than 1.2 million dollars. During the eleven-month period of violation, they received $229,000,000, and since the violation to date they have received in excess of four billion dollars from the public fisc.

Petitioner prays that the writ of certiorari be granted so that the precise limits on the administrator's (Secretary's) discretion not to seek recovery of all the subsidies paid be decided by this Court and prior to remand. Without the answer to this question, petitioner would be subject to re-litigation in a judicial forum after nine years of litigation in administrative proceedings and appeals. This re-litigation would apparently not preclude even further remand to the new Secretary, since Judge Wright in Safir III suggests this as an option to the District Court Judge. (See opinion of Judge Wright, Exhibit A, page 17a). Without review by the Supreme Court rather than serve the purpose of Article III of the Constitution, the wearisome course that the remand plots would be violative of it. Section 810 of the Merchant Marine Act of 1936, in spite of its brief clear language, has run afoul of judicial and administrative interpretation to the point where "if a federal court is required to do all over again what the agency has done, the system of review violates Article III of the Constitution". (See Kenneth Culp Davis-Administrative Law Text, page 542).

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Seven years ago counsel for this petitioner, in the first petition for certiorari, 400 U.S. 850, *cert. denied,* concluded the petition with a quote from *Crooks* v. *Harrelson,* 282 U.S. 55, 60, which in retrospect is more appropriate now than it was then.

> "Courts have sometimes exercised a high degree of ingenuity in the effort to find justification for wrenching from the words of a statute a meaning which literally they do not bear in order to escape consequences though to be absurd or to entail great hardship. But an application of the principle so nearly approaches the boundary between the exercise of the judicial power and that of the legislative power as to call rather for great caution and circumspection in order to avoid usurpation of the latter."

CONCLUSION

The substantial questions of Federal law involved have never been decided by this Court. Their proper proper and authoritative resolution which only this Court can provide will result in meaningful enforcement of the statute. The petition for certiorari should be granted.

Respectfully submitted,

MARSHALL P. SAFIR
Pro Se

April 26, 1977

CERTIFICATE OF SERVICE

This is to certify that I Arleen O'Donnell have this 28th day of February, 1978, served by first class pre-paid postage a copy of this Supplemental Appendix in Docket 77-6219 on all counsel of record in this proceeding.

Arleen O'Donnell
ARLEEN O'DONNELL

DATED: This 28th day of
February, 1978

Regina E. Levine

REGINA E. LEVINE
Notary [illegible] York
[illegible]
Qualified in [illegible] County
Commission Expires March 30, 1979